Oct. 20 Affirmed and assigned to Field. Field 2.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~320~~ 175

ROBERT PATTERSON, PLAINTIFF IN ERROR,

vs.

EMILIE DE LA RONDE, WIDOW AND EXECUTRIX OF PIERRE HOA, DECEASED.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

FILED DECEMBER 6, 1867.

SUPREME COURT OF THE UNITED STATES.

No. 326.

ROBERT PATTERSON, PLAINTIFF IN ERROR,

vs.

EMILIE DE LA RONDE, WIDOW AND EXECUTRIX OF PIERRE HOA, DECEASED.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

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1 Circuit Court of the United States, fifth circuit and district of Louisiana.

Writ of error on the intervention and third opposition of Elizabeth Emilie de la Ronde, widow and test'y executrix of Pierre Hoa.

ROBERT PATTERSON
vs.
MEDORA A. MCGEE, *et al.* } No. 3,646.

P. H. Morgan, esq., for intervenor and third opponent, defendant in error; Hornor & Benedict, esqr s, for defendant in intervention, and plaintiff in error.

Returnable to the Supreme Court of the United States the first Monday of December, 1867.

Circuit Court of the United States for the sixth circuit and eastern district of Louisiana.

Petition, filed October 24, 1865.

R. PATTERSON
vs.
MEDORA MCGEE. } No. 3,646.

To the judges of the Circuit Court of the United States for the sixth circuit and eastern district of Louisiana:

The petition of Robert Patterson, a resident of Philadelphia, and a citizen of Pennsylvania, respectfully shows:

That Mrs. Medora A. Lyons, of lawful age, wife of Thomas L. McGee, both residents of the parish of Orleans, and citizens of the State of Louisiana, are justly indebted to petitioner in the full sum of thirty-five thousand dollars, with interest at eight per cent. per annum from 1st February, 1858, till paid, for this, to wit:

2 That petitioner is the legal owner and holder of seven promissory notes, each for five thousand dollars, subscribed by the said Mrs. Medora A. McGee, to her own order and by herself endorsed, dated 20th July, 1858, bearing interest at the rate of eight per cent. per annum from 1 February, 1858, 'til paid, and payable at the office of the New Orleans Canal & Banking Company at New Orleans, as follows, to wit: four of the said notes on the 1–4 February, 1859, and the last three notes to become due and payable on the 1–4 February, 1860; all of which were signed, executed, and delivered with the assistance and authorization of her said husband, T. L. McGee, evidenced in writing.

And to secure the payment of the said notes, the said Mrs. McGee mortgaged by act, before A. Mazureau, then a notary public of this city, on 20th July, 1858, the plantation and slaves thereunto belonging. All of which more fully appears by reference to the mortgage act made part hereof.

Petitioner further shows that he cannot produce and file the seven notes hereinbefore described, for the reason that he is informed, and verily believes, that the said notes are now in the possession of Jno.
M. Huger or Geo. W. Ward, late receivers of the so-called
3 confederate government, without petitioner assent, and contrary to his instructions; but he is willing to give security for the same, should it be required of him by this honorable court.

Wherefore, petitioner prays that Mrs. Medora A. McGee and her husband, T. L. McGee, be severally cited to appear and answer this petitition, and, after due proceedings, that Mrs. Medora A. McGee be condemned to pay petitioner the full sum of thirty-five thousand dollars, with eight per cent. per annum interest from 1st February, 1858, till paid, with four dollars cost of act, with five per cent. attorney's fees on the amount sued for, and special mortgage on the real property as provided for in said act, and therein fully detailed, with all costs and all general and equitable relief.

(Signed) DURANT & HORNER,
Att'eys for Petitioner.

Act of Mortgage, filed October 24, 1865.

4 Mortgage.—Mrs. McGee to R. Patterson & Co.

26*th July*, 1858.

Before me, Adolphe Mazureau, a notary public in and for the parish and city of New Orleans, duly commissioned and sworn, and in presence of the subscribing witnesses, personally came and appeared Mrs. Medora A. Lyons, of lawful age, wife of Thomas L. McGee, residing in this parish, and herein duly assisted and authorized by her husband, and also duly authorized by the honorable the judge of the third District Court of New Orleans, as it will appear by reference to the certificate hereto annexed, who declared and acknowledged that she is justly and truly indebted unto Messieurs R. Patterson & Co., a commercial firm established and trading in the city of Philadelphia, in the sum of thirty-five thousand dollars, for money loaned and advanced to her, in payment of which she has furnished seven promissory notes, for five thousand dollars each, subscribed by herself, to her own order, and by herself endorsed, dated this day, bearing interest at the rate of eight per cent. per annum from the first day of February, eighteen hundred and fifty-eight, till paid, and payable at the office
of the New Orleans Canal & Banking Company, in New Or-
5 leans, as follows, to wit: four of the said notes to become due and payable on the first and fourth of February, 1859, and the last three notes to become due and payable on the first and fourth of February, 1860, including days of grace. The said seven promissory notes were marked "Ne varietur," and countersigned by me, notary, for the purpose of being identified herewith.

Now, therefore, in order to secure the full and punctual payment of the above-described seven promissory notes, in principal, interest,

and costs, including lawyers' fees, or costs of collection, in case it becomes necessary to constitute legal proceedings to recover the amount of said notes, which said costs of collection are fixed by the parties at five per cent. on the amount sued for, she, the said Mrs. Medora A. Lyons, wife of said Thomas L. McGee, by him duly assisted, and also duly authorized by the honorable the judge of the third District Court of New Orleans, does by these presents mortgage and specially hypothecate, in favor of Messieurs R. Patterson & Co. of Philadelphia, and in favor of the future holders of said notes, all and singular, the following described property, to wit:

6 1°. A certain tract of land, established and cultivated as a sugar plantation, situate in the parish of Orleans, on the right bank of the river Mississippi, at about four miles below the city of New Orleans, having twenty-five and a half arpents front on said river, fourteen arpents of which, on the upper side, have a depth of seventy arpents, and the remaining eleven and a half arpents, on the lower side, have a depth of seventy-five arpents, bounded on one side by P. Cazelar's plantation, and on the other side by the public road leading to the parish of Plaquemines, together with all the buildings and improvements thereon, engines, machinery, stock, cattle, horses, mules, farming utensils, implements of husbandry, and generally everything on said plantation and used in the cultivation thereof, being the same property which the said Mrs. McGee acquired by purchase from P. Hoa, by an act passed in this office on the twenty-third day of April, eighteen hundred and fifty-three.

2°. And the following described slaves, attached to and employed on said plantation, to wit: William, aged 43 years; Abraham, 66; Jerry, 59; Francisque, 51; Jerry, mulatto, 46; John, American, 46; Bob, 46; Doy, 36; Squire, 40; Codio, 31; Bohomme, 18; Osborne, 36; Isaac, 36; Ruben, 39; Jim, 47; Charles, 36; Joseph, 36; Smith, 7 30; Coco, 56; Ebram, 36; Gabriel, 36, Macoy, 56; Hypolite, 16; Bernard, 36; Richmond, 51; Charles Fig, 51; Bencal, 40; Auguste, 34; Little William, 36; Henry, 30; John Chaland, 50; Davis, 46; Dimbo, 40; Gaspard, 31; Wesly, 24; Sophie, 36; Wilson, 13; Noel, 8; Esther, 8; Felicite, 5; Frank, 42; Helena, 15; an infant, 3 years; Adeline, 18; Henry, 7; Alice, 15; an infant boy, 3; Lise, 31; Charlotte, 34; Roy, 17; Felicite, 40; Fanny, 41; Judy, 41; California, 11; Washington, 43; Randal, 16; David, 47; Frank, 11; Brinkley, 45; Charlotte, 41; Louisa, 34; Washington, 9; Angel, 39; Laurent, 7; Preston, 18; Fanny, 39; Virginia, 11; Caroline, 30; Elizabeth, 7; Gordon, 27, together with the increase of the said female slaves during the continuance of this mortgage.

The said Mrs. McGee binds herself not to sell, mortgage, nor in any manner alienate the said plantation and slaves, or any portion thereof, to the prejudice of this mortgage, and hereby confesses judgment in favor of the said R. Patterson & Co., and in favor of the future holders of said notes for the whole amount thereof, in principal, interest, and costs, including costs of collection, as above 8 stipulated.

Mrs. McGee binds herself to procure a mortgage certificate

as soon as practicable, to be annexed to this act; and she binds herself to cancel all the mortgages on said plantation and slaves, with the exception of the one for fifty thousand dollars in favor of her vendor, Pierre Hoa, and the one in favor of the Citizens' Bank of Louisiana; and it is understood that whenever the said bank shall be ready to grant to Mrs. McGee the amount of loan to which she may be entitled on the stock which she owns in said institution, then the said R. Patterson & Co. shall, if it becomes necessary, waive their priority in favor of said bank, to enable her to receive the amount of her credit on said stock.

This act of mortgage is accepted by J. P. Benjamin, esq., of this city, in the name and in behalf of the said R. Patterson & Co., for whom he acknowledges the receipt of the seven notes herewith identified.

Thus done and passed in my office, in the city of New Orleaes, on this twentieth day of July, eighteen hundred and fifty-eight, in the presence of J. Emile Jarreau and Albert P. Carriere, witnesses, of lawful age, residing in this city, who have signed their names with the parties, and me, notary, after reading the act

9 (Original signed) MEDORA McGEE.

To authorize my wife, T. D. McGEE.

J. E. JARREAU.
ALBERT P. CARRIERE.

J. P. BENJAMIN,
Att'y of R. Patterson & Co.
A. MAZUREAU,
Not. Pub.

I, Ernest Eude, a notary public, duly commissioned and sworn, in and for the parish of Orleans, State of Louisiana, residing in the city of New Orleans, do hereby certify the foregoing act to be a true copy of the original act on file in the records of Adolphe Mazureau, a notary pnblic in this parish of Orleans, which are in my possession as custodian thereof.

New Orleans, October 19th, A. D. 1865.

(SEAL) E. EUDE,

Notary Public, general custodian of all notarial records of persons out of office, or whose records are in my possession and custody.

[5c I. R. stamp, cancelled.]

STATE OF LOUISIANA,
City of New Orleans.

MORTGAGE OFFICE.

I, the undersigned, deputy recorder of mortgages, do hereby certify that the foregoing act was recorded in this office on the third August, 1858, in book 72, fo. 37.

10 N. O., January twenty-ninth, 1867.

A. DUCATEL, JR.,
Dep't y Recorder.

[5c stamp, cancelled.]

Citation to Mrs. McGee.

R. PATTERSON
vs.
MEDORA A. MCGEE *et al.* } No. 3,646.

The President of the United States of America to the Marshal of the Eastern District of Louisiana, greeting:

You are hereby commanded to summon Mrs. Medora A. Lyons, wife of Thomas L. McGee, a citizen of the State of Louisiana, to comply with the demand of Robert Patterson, a citizen of the State of Pennsylvania, contained in the petition, of which a copy accompanies this citation, or to deliver her answer to the same, in the office of the clerk of the Circuit Court of the United States, sixth judicial circuit and eastern district of Louisiana, in the city of New Orleans, in ten days after the service hereof, or judgment will be rendered against her by default, which delay is increased one day for
11 every ten miles the defendant's residence is distant from New Orleans, the place where the court is held; and that you make due return hereof on the first Monday of November, 1865.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, at the city of New Orleans, this 24th day of October, A. D one thousand eight hundred and sixty-five, and of the independence of the United States of America the ninetieth year.

[SEAL.] (Signed) F. B. VINOT,
D'y Clerk.

Marshal's Return.

Received October 25th, 1865; and on the same day, month, and year served a copy of this citation, and the petition of plaintiff accompanying the same on Mrs. Medora A. Lyons, wife of Thos. L. McGee, in person, at their domicil, in the parish of Orleans, La., the said Mrs. Medora Lyons, wife of Thos. L. McGee, being one of the defendants to the above-entitled suit.

Returned October 26th, 1865.

(Signed) WM. GRASS,
D'y U. S. Marshal.

12 *Citation to Thos. L. McGee.*

R. PATTERSON
vs.
MEDORA A. MCGEE *et al.* } No. 3,646.

The President of the United States of America to the Marshal of the eastern district of Louisiana, greeting:

You are hereby commanded to summon Thomas L. McGee, a citizen of the State of Louisiana, to comply with the demand of Robert Patterson, a citizen of the State of Pennsylvania, contained in the petition, of which a copy accompanies this citation, or to deliver his

answer to the same, in the office of the clerk of the Circuit Court of the United States, sixth judicial circuit and eastern district of Louisiana, in the city of New Orleans, in ten days after the service hereof, or judgment will be rendered against him by default; which delay is increased one day for every ten miles the defendant's residence is distant from New Orleans, the place where the court is held, and that you make due return hereof on the first Monday of November, 1865.

Witness the honorable Salmon P. Chase, Chief Justice
13 of the Supreme Court of the United States of America, at the city of New Orleans, this 24th day of October, A. D. one thousand eight hundred and sixty-five, and of the independence of the United States of America the ninetieth year.

[SEAL.] (Signed) F. B. VINOT,
Deputy Clerk.

Marshal's return.

Received October 25th, 1865; and the same day, month, and year, served a copy of the within citation and the petition of plaintiff accompanying the same on Thos. L. McGee, personally, one of the defendants named in above suit, at his domicil, in the Parish of Orleans.
Returned October 26th, 1865.
(Signed) WM. GRASS,
Deputy U. S. Marshal.

14 United States Circuit Court, eastern district of Louisiana.

Exception and prayer for Oyer, filed November 15th, 1865

R. PATTERSON
vs.
MEDORA A. MCGEE *et al.* } No. 3,646.

And now comes defendants, Thos. L. McGee and Medora A. McGee, unto this hon. court, and file this their exception; that they cannot safely plead to plaintiff's demand without Oyer of the notes mentioned in petition as the basis of this suit; that John M. Hugher, formerly Confederate States receiver, in whose hands it is alledged the notes probably are or were, is now in the city of New Orleans; that the other receiver, George W. Ward, in whose hands it is alleged, said notes probably are or were, is, defendants are informed, residing at Paducah, Kentucky; that it is in the power of plaintiff, with proper diligence, to produce and make profert of said notes, if in existance; that defendants have a defence which would be materially strengthened by the production of said notes, &c.

Wherefore, defendants pray Oyer of said notes; and that they be excused from answering until profert of the same is made.
(Signed) W. HOWELL ROBINSON,
Att'y for defendants.

Marshal's return.

15 Copy of this original received November 15th, 1865; and on the 16th day of same month and year I served a copy of the within document on M'rs Durant & Horner, att'ys for pl'ff in this suit, by leaving it in the hands of J. P. Horner, esq., personally, he being one of the above named firm of Durant & Horner, esq s, att'ys, etc.

Returned November 16th, 1865.

(Signed) WM. GRASS,
D'y U. S. Marshal.

Circuit Court of the United for the sixth circuit and eastern district of Louisiana, November term, 1865.

Order exception fixed for trial, from the minutes of Dec. 1st, 1865.

NEW ORLEANS, *Friday, December 1st*, 1865.

Court met pursuant to adjournment.
Present: Hon. E. H. Durell, District Judge.

R. PATTERSON
vs.
MEDORA A. MCGEE *et al.* } No. 3,646.

On motion of Durant & Hornor, of counsel for plaintiff in this case, ordered that the exception filed therein be assigned for trial
16 for Saturday, the 9th instant, at 11 o'clock a. m., and that the defendant's counsel be notified thereof.

Circuit Court of the United States for the sixth judicial circuit and eastern district of Louisiana.

Notice of trial.

R. PATTERSON
vs.
MEDORA A. MCGEE *et al.* } No. 3,646.

You are hereby notified that the exception filed by defendants in in this case is assigned for trial for Saturday, the 9th day of December, 1865, A. D., at 11 o'clock a. m.

By order of court.

Witness my hand and seal of the said court, at New Orleans, this 1st day of December, A. D. 1865.

[SEAL.] (Signed) F. B. VINOT,
Deputy Clerk.

To W. HOWELL ROBINSON, Esq.

17 *Marshal's return.*

Received December 4th, 1865; and same day, month, and year served a copy of this notice on W. H. Robinson, esq., by leaving the

same at his office on Camp street, corner of Natchez, in this city, in the hands of the partner of said Robinson.

December 5th, 1865.

J. J. PREIS,
D'y U. S. Marshal.

Notes, filed December 2d, 1865.

[$6,000.] NEW ORLEANS, 24*th April*, 1857.

On the 1st of March, '58, after date, I promise to pay to the order of R. Patterson & Co., at the Bank of Louisiana, six thousand dollars, value received, with eight per ct. interest, after maturity.

No.———. Due ———.

(Signed) M. A. McGEE.

" To authorize T. L. McGEE.

[$7,000.] NEW ORLEANS, 24*th April*, 1857.

Eleven months after date, I promise to pay to the order of R. Patterson & Co., at the Bank of Louisiana, seven thousand dollars,
18 value received, with eight per cent. interest, after maturity.

No.———. Due ———.

(Signed) M. A. McGEE.

" To authorize T. L. McGEE.

[$5,000.] NEW ORLEANS, *July* 20*th*, 1858.

On the first of February, 1859, I promise to pay to my own order, at the office of the New Orleans Canal and Banking Company, in this city, the sum of five thousand dollars, value received, with interest, at the rate of eight per cent. per annum from the 1st of February, 1858, till paid.

(Signed) MEDORA A. McGEE.

" To authorize my wife T. L. McGEE.

Ne varietur. New Orleans, July 20th, 1858.

(Signed) A. MAZUREAU,
Not. Pub.

Endorsed: Medora A. McGee. To authorize my wife, T. L. McGee.

[$5,000.] NEW ORLEANS, *July* 20*th*, 1858.

On the first of February, 1859, I promise to pay to my own order, at the office of the New Orleans Canal & Banking Company, in this city, the sum of five thousand dollars, value received, with interest at the rate of eight per cent. per annum from the 1st of February, 1858, till paid.

(Signed) MEDORA A. McGEE.

" To authorize my wife, T. L. McGEE.

Ne varietur. New Orleans, July 20, 1858.

(Signed) A. MAZUREAU,
Not. Pub.

19 Endorsed: Signed Medora A. McGee. To authorize my wife. T. L. McGee.

[$5,000.] NEW ORLEANS, *July 20th*, 1858.

On the first of February, 1859, I promise to pay to my own order, at the office of the New Orleans Canal & Banking Company in this city, the sum of five thousand dollars, value received, with interest at the rate of eight per cent. per anhum from the first of February, 1858, till paid.

(Signed) MEDORA A. McGEE.
" To authorize my wife, T. L. McGEE.

Ne varietur. New Orleans, Febr'y 20, 1865.

(Signed) A. MAZUREAU,
Not. Pub.

Endorsed: Signed Medora A. McGee. To authorize my wife. Signed T. L. McGee.

[$5,000.] NEW ORLEANS, *July 20th*, 1858.

On the 1st of February, 1859, I promise to pay to own order, at the office of New Orleans Canal & Banking Company, the sum of five thousand dollars, value received, with interest, at the rate of eight per cent. per annum from the first of February, 1858.

(Signed) MEDORA A. McGEE.
" To authorize my wife. T. L. McGEE.

Ne varietur. New Orleans, July 20th, 1858.
(Signed) A. MAZUREAU,
Not. Pub.

Endorsed: Signed Medora A. McGee. To authorize my wife. Signed T. L. McGee.

20 *Protest, filed, December 2d*, 1865.

UNITED STATES OF AMERICA,
State of Louisiana:

By this public instrument of protest be it known, that on this twenty-seventh day of April, in the year one thousand eight hundred and fifty-eight, at the request of Messrs. Benoist, Shaw & Co., holders of the original promissory note, whereof a true copy is on the reverse hereof written, I, Thomas Jefferson Beck, a notary public, in and for the parish of Orleans, domiciliated in the city of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, presented said note within "bank hours," this day, "at the Bank of Louisiana," in this city, where the same is made payable to the "paying teller" in said bank; and I did then and there demand payment of said note; and I was answered that for want of "funds" of the maker, said note could not be paid.

Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said note, as against all others

whom it doth or may concern, for all exchange, re-exchange, dam-
ages, costs, charges, and interest, suffered or to be suffered,
21 for want of payment of the said note.

Thus done and protested in the presence of Messrs. James S. Moody and Morris G. Beck, witnesses.

In testimony whereof, I grant these presents under my signature and impress of my seal of office, at the city of New Orleans, on the day and year first above written.

[SEAL.] (Signed) THOMAS J. BECK,
Notary Public, No. 31, *Camp St.*

$9,000.

NEW ORLEANS, 24 *April*, 1857.

Twelve months after date, I promise to pay to the order of R. Patterson & Co., at the Bank of Louisiana, nine thousand dollars.
Value received. M. A. McGEE.
To authorize T. L. McGEE.

Endorsed: R. Patterson & Co., W. C. Patterson. Pay Messrs. Benoist, Shaw & Co., or order for collection, Drexel & Co.

Protest, filed December 2d, 1865.

22 UNITED STATES OF AMERICA,
State of Louisiana:

By this public instrument of protest, be it known: That on this twenty-seventh day of March, in the year one thousand eight hundred and fifty-eight, at the request of Messrs. Benoist, Shaw & Co., holders of the original promisory note, whereof a true copy is on the reverse hereof written, I, Thomas Jefferson Beck, a notary public in and for the parish of Orleans, domiciliated in the city of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, presented said note, within "bank hours," this day, at the Bank of Louisana in this city, where the same is made payable, to the "paying teller" in said bank; and I did then and there demand payment of said note; and I was answered, that for want of funds of the maker, said note could not be paid.

Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said note as against the all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges, and interest suffered, or to be suffered, for want of payment of the said promissory note.

Thus done and protested in the presence of Messrs. John W.
23 Cantwell and Morris G. Beck, witnesses.

In testimony whereof, I grant these presents, under my signature and impress of my seal of office, at the city of New Orleans, on the day and year first above written.

[SEAL.] (Signed) THOMAS J. BECK,
Notary Public, No. 31, *Camp Street.*

$7,000.

NEW ORLEANS, 24*th April*, 1857.

Eleven months after date, I promise to pay to the order of R. Patterson & Co., at the Bank of Louisiana, seven thousand dollars, value received, with eight pr. ct. interest after maturity.

M. A. G. McGEE.
To authorize T. L. McGEE

[This note is the same transcribed at page 17.]

Endorsed: R. Patterson & Co., W. C. Patterson. Pay Mess. Benoist, Shaw & Co., or order for collection, Drexel & Co.

Note annexed

$7,000

NEW ORLEANS, 24*th April*, 1857.

Eleven montbs after date I promise to pay to the order of R. Paterson & Co., at the Bank of Louisiana, seven thousand
24 dollars, value received, with eight per ct. interest after maturity.

No. ——. Due ——.

M. A. McGEE.
To authorize T. L. McGEE.

[Same note above transcribed.]

Protest, filed December 2d, 1865.

UNITED STATES OF AMERICA,
State of Louisiana:

By this public instrument of protest, be it known: That on this fourth day of March, in the year one thousand eight hundred and fifty-eight, at the request of Messrs. S. O. Nelson & Co., holders of the original note, whereof a true copy is on the reverse hereof written, I, William Shannon, a notary public in and for the parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, presented said note to the proper officer at the Bank of Louisiana in this city, where the same is made payable, and demanded payment thereof through my deputy, Edward Allen, who has answered that no funds had been deposited there to pay the same.

Whereupon I, the said notary, at the request aforesaid, did
25 protest, and by these presents do publicly and solemnly protest, as well as against the drawer or maker of the said note, as against all others whom it doth or may concern, for all exchange, or re-exchange, damages, costs, charges, and interest, suffered, or to be suffered, for want of payment of the said note.

Thus done and protested in the presence of Edward Allen and James B. Williams, Jr., witnesses.

In testimony whereof, I grant these presents under my signature, and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

[SEAL.] WILLIAM SHANNON,
Notary Public.

29 United States Circuit Court, for the sixth judidial circuit, and eastern district of Louisiona.

Exception, field February 2nd, 1866.

R. PATTERSON
vs.
MEDORA A. MCGEE and others. } No. 3,646.

Peremptory exception of Medora A. McGee, and T. L. McGee, the defendants herein.

And now come the defendants above-named and except to the action of the plantiff's, on the following grounds:

That plaintiff cannot have and maintain this cause of action stated in his petition, or stand in judgment against the defendants, for that, more than five years elapsed from the date of the maturity of the instrument and notes described in his said petition, until the commencement of his said action herein by plaintiff.

(Signed) W. HOWELL ROBINSON,
Att'y for Defendants.

Hearing and continuance of cause, from the minutes of Feb-
30 *ruary 2d, 1866.*

R. PATTERSON
vs.
MEDORA A. MCGEE and others. } No. 3,646.

This cause came up for trial.

Durant and Horner, for plaintiff, W. Howell Robinson, esq., for defendants.

When after hearing, pleadings and evidence, ordered that the cause be continued until Monday next, at 11 o'clock, a. m.

Note of evidence, filed February 2nd, 1866.

Note of evidence.

R. PATTERSON
vs.
MEDORA A. MCGEE and others. } No. 3,646.

31 Plaintiff offered in evidence the protests and notes, March 1, 2, 3, 4, 5, 6, and 7.

The protests offered in evidence by plaintiffs, will be found at pages Nos. 20, to No. 26, inclusive.

And the notes marked 1, 2, 3, 4, 5, 6, and 7, also offered in evidence by plaintiff, will be found at pages No. 17, to No. 21, inclusive; and protests with notes annexed from ps. 168 to 176, inc ——

United States Circuit Court, sixth circuit, and eastern district of Louisiana, November term, 1865.

Judgment.

NEW ORLEANS, *Mouday, February 5th*, 1865.

Court met pursuant to adjournment. Present, Hon. E. H. Durell, district judge.

R. PATTERSON
vs.
MEDORA A. MCGEE *et al.* } No. 3,646.

This cause came up in pursuance to continuance of 2nd instant; W. S. Benedict, esq., on behalf of Durant & Hornor, for plaintiff, W. Howell Robinson, esq., for defendants.

When after hearing further evidence and argument, it is ordered, adjudged, and decreed, that the defendants' plea of prescription be overruled, and that the plaintiff, Robert Patterson, do have and recover judgment against the defendant, Medora A. Lyon, wife of Thomas L. McGee, for the sum of thirty-five thousand dollars with eight per cent. per annum interest, from 1st February, 1858, till paid, with four dollars cost of act, with five per cent. attorney's fees on the amount sued for, and special mortgage on the real property, as provided for in the act of mortgage passed before A. Mazureau, then a notary public of this city, on 20th July, 1858, and made part of plaintiff's petition.

Judgment rendered February 5th, 1866.

Judgment signed February 9th, 1866.

(Signed) E. H. DURELL,
Judge.

Circuit Court of the United States for the sixth circuit, holding sessions in and for the eastern district of Louisiana.

33 *Fi Fa.*

The President of the United States to the Marshal of the Eastern District of Louisiana, or his lawful deputy, greeting:

You are hereby commanded that you demand from Medora A. Lyon, wife of Thomas L. McGee, the sum of thirty-five thousand dollars, with 8 pr. ct. per annum interest from 1st February, 1858, till paid, with four dollars cost of act, with 5 pr. ct. attorney's fees, on the amount sued for, and special mortgage on the real property, as provided for in the act of mortgage passed before A. Mazureau, then a notary public in this city, on the 20th July, 1858, annexed to, and made part of this writ and costs of suit; clerk's costs: $35 00 cash, which Robert Patterson lately recovered by judgment of the Circuit Court of the United States for the sixth circuit and eastern district of Louisiana; and if the same be not paid on demand, that then you cause

the same to be made out of the personal estate of the said Mrs. McGee, in your district, if sufficient personal estate can be
34 found therein; but if sufficient personal estate cannot be found in your district, that then you cause the sum to be made out of the real estate of the said Mrs. McGee, in your district, whereof she was owner, on the ninth day of February, 1866, into whose hands soever the same may have come; and that you have those moneys before our said court, to render to the said Robert Patterson, for the judgment aforesaid, on the seventieth day from the date hereof, together with this writ.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this twenty-eight day of March, A. D. 1866, and 90th year of the independence of the United States.

(Signed) CHAR'S CLAIBORNE, *Clerk.*
By F. B. VINOT, *D'y Clerk.*

Marshal's return.

Received March 29, 1866; and on the 15th May, 1866, seized and took into my possession the properties described in the inventory of the same, taken and hereto annexed as a part of this return, which properties after the publication, and after all the legal requi-
35 sites of the laws, in such cases made and provided, had been complied with, were advertised, and offered for sale at public auction, on the 23d June, 1866, at 12 o'clock m., at the entrance of the custom-house, on old Levee street, between Custom House and Canal streets, next to the entrance to the post-office, when and where Thos. J. Durant, esqr., for the account of R. Patterson, pl'ff in the above suit, being the highest and last bider, the said properties were adjudicated to him for the account of the said Robert Patterson, for the price and sum of thirty-six thousand two hundred dollars cash, which amount the said purchaser retained in his hands, firstly: to pay the first mortgage in favor of Pierre Hoa, amounting to thirty-three thousand three hundred and thirty-three and 33-100 dollars; and 2dly, the said purchaser paid to me the sum of three hundred and thirty-eight and 60-100 dollars, on ac. of the U. S. Marshal's bill claimed herein by him, say six hundred and thirty-seven and 45-100 dollars, reserving to the said marshal his rights in law to prove the legality of the balance of the bill due him, say two hundred and ninety-eight and 85-100 dollars; and the said purchaser bound himself to pay all clerk's fees due in said suit, and all the taxes
36 due on said property, such as parish, State, U. S. direct, and police, jury, and also whatever amount may have been due to freedmen employed on said plantation up to the day of sale, say the 23d day of June, 1866, and the balance of said adjudication, the said purchaser retained on ac. of his claim.

(Signed) A. BOISBLANC,
Dp'y U. S. Marshal.

I therefore return this writ satisfied in part.
Marshal's office, 20th August, 1866.

U. S. Circuit Court.

Documents annexed to Fi Fa.—Document B.

R. PATTERSON
vs.
MCGEE. } No. 3,646.

Comments of the bill of costs presented by the U. S. Marshal, the numbers here corresponding with those of the said bill.

No. 1	should be.....	$2 00	instead of.....	$8 00
	2 no objection.....	2 60	....	2 60
	3 should be.....	1 00	instead of.....	2 00
	4 " "	1 00	instead of.....	2 00
	5 " " ..... }	1 50	....	4 00
	6 " " ..... }		....	
	7 not allowed.....		....	19 50
37	8 not allowed.....		....	4 00
	9.....	36 00	....	36 00
	10.....	36 00	....	36 00
	11 not allowed.....		....	8 60
	12.....			
	13.....			
	14.....	1 00	....	1 00
	15 not allowed.....		....	8 85
	16 should be.....	191 00	instead of.....	458 75
	17.....	10 00	....	10 00
	18.....	1 50	....	1 50
Should be	.....	$283 60	instead of.....	$602 45

Printed slip annexed.

By the U. S. Marshal.
United States Marshall's office.

In the United States Circuit Court for the sixth cuircuit and eastern district of Louisiana.

R. PATTERSON
vs.
MEDORA A. MCGEE. } No. 3,746.

By vlrtue of a writ of fi fa issued, and to me directed, by the aforesaid court, on the 20th March, 1866, I have seized, and will expose at public sale, at the entrance to the custom-house, on old Levee street, next entrance to the post-office, in this city, on Saturday, the 23d of June, 1866, at 12 o'clock, M., the following property, viz:

38

A certain tract of land, established and cultivated as a sugar plantation, situate in the parish of Orleans, on the right bank of the river

Mississippi, at about four miles below the city of New Orleans, having 25½ arpents front on said river, 14 arpents of which on the upper side have a depth of 70 arpents, and the remaining 11½ arpents, on the lower side, have a depth of 75 arpents, bounded on one side by P. Cazelard's plantation, and on the other side by the public road leading to the parish of Plaquemines, together with the buildings, improvements, etc., as hereinafter described, viz: one sugar-house, with steam machinery complete and in good order; one cotton gin an engine; 1 stable; 20 negro cabins; 1 main-house and out buildidgs, in good order; 30 No. 1 mules; 22 plows; 9 carts; 8 set of collars and chains; 130 acres of plant cane; 30 acres ratoons cane; 200 acres cotton, and 130 acres of corn, and all other implements, as shown per the inventory of same in my office.

Terms cash, in U. S. Treasury notes.

(Signed) CUTHBERT BULLITT,
U.S. Marshal for the eastern district of Louisiana.

Marshal's office, New Orleans.

In the United States Circuit Court for the sixth circuit and Eastern District of Louisiana.

39 *Appraiser's report, annexed to Fi Fa.*

R. PATTERSON
vs.
MEDORA A. MCGEE. } No. 3,646.

We, the undersigned, the duly appointed appraisers on behalf of the plaintiff and def'ts, in the above-entitled suit, to value the following moveable and immoveable properties seized in the above suit, and more fully shown in the printed slip hereto annexed, and advertised to be sold at public auction, on Saturday, the 23d day of June, 1866, at 12 o'clock M., having repaired to the said plantation, after a careful and minute examination of the said properties, we came to the conclusion to value the same as follows, viz:

No. 1. A tract of land fronting on the Mississippi river, right bank, at about four miles from the city containing about nineteen hundred acres, representing to be about one mile square; said tract contain 130 acres of plant cane, 30 acres of ratoons cane, 200 acres of
40 cotton, and 130 acres of corn, valued at $18,000

2.	One sugar-house, with machinery and apparatus	$5,000
3.	One cotton-gin and engines	1,000
4.	One main dwelling house and out buildings attached	6,000
5.	30 negro cabins	1,000
6	1 stable	300
7.	9 carts	250
8.	12 old ploughs @ $2,00 apeice	24
9.	10 new ploughs @ $12 " "	120
10.	8 sets collars and chains	4

11. 30 mules—9 @ $75 and 21, $150	3,825
12. 150 cords of wood	3 00
13. 10 spades and shovels, 48 hoes	50
14. 9 wood-cars, R. R	225
	$36,098

(Signed) ANTOINE FREDERICK,
Appraiser for Defend'ts.

(Signed) W. R. CRANE,
Appraiser for Plaintiff.

Witnesses:
(Sig'd) H. H. FLANAGAN,
RT. F. BENSON.

New Orleans, June 20th, 1866.

We, the appraisers appointed in this case, after having completed the appraisements made of the properties seized in the above suit, were called upon by Mr. Drennen to state that the properties men-
41 tioned in articles, No. 9, 11, 12, 13, 14, belong to him, as his private properties, and not properties leased by him from Mrs. Medora A. McGee. We now respectfully submit the following statement, viz:

No. 9. 10 ploughs	$120
" 11. 21 mules	3,150
" 12. 150 cords of wood	300
" 13. 10 spades and shovels, 48 hoes	50
" 14. 4 R. R. wood-cars	100
	$3,920.

(Signed) ANTONIE FREDERICK,
Appraiser for Def'ts.

" W. R. CRANE,
Appraiser for Plff.

New Orleans, June 26th, 1866.

In the United States Circuit Court for the sixth circuit and eastern district of Louisiana.

Document annexed to Fi Fa.

R. PATTERSON
vs.
MRS. MEDORA A. MCGEE & *als.* } No. 3,646.

The defendants in the above suit, having been duly notified to appoint an appraiser on their own behalf to value the prop-
42 erty moveable and immoveable, seized therein, and advertised to be sold on Saturday the 23d day of June, 1866, at 12 o'clock, m.; and the said def't, through the manager and keeper of said property, having declined to appoint an appraiser on said deft's' behalf, I,

the United States marshal of the said court, do now, by virtue of the power vested in me by law in such cases, appoint Mr. Antoine Frederick as appraiser on said defendant's behalf.

(Signed) A. BAUDOUIN,
Chief Deputy.

New Orleans, June 18th, 1866.

I, the undersigned, the duly appointed appraiser on behalf of the deft's in the within suit, do solemnly swear that I will, to the best of my ability, and impartially, discharge the duties incumbent on me as such.

(Signed) ANTOINE FREDERICK.

Sworn to and subscribed the 18th day of June, 1866.

(Signed) F. B. VINOT.
D'y Clerk.

U. S. Circuit Court.

Letter of T. G. Durant attached to Fi Fa.

* * * *

43 ROBT. PATTERSON
vs.
T. L. MCGEE.

NEW ORLEANS, *25th June*, 1866.

C. BULLITT, Esq., U. S. Marshal,

SIR: In answer to your note of this date, I say that it is understood and agreed between Mr. Drennen, tenant of the plantation purchased by me for R. P. on 23d, that his claim to the property should be acknowledged and respected; and you are hereby authorized to take your official course in conformity to this understanding.

Yours, respectfully,
T. J. DURANT,
18 *Carondelet street.*

Document attached to Fi Fa.

PATTERSON
vs.
MCGEE.

NEW ORLEANS, 9 *July*, 1866.

C. BULLETT, Esq., U. S. Marshal.

DEAR SIR: In order to put the difference of opinion between us as to the proper amount of costs to be charged in this case by
44 you on an equitable footing, both for my client and yourself; and in order that I may have the deed of sale to record, which I think is my client's absolute right, I propose to pay you

the amount tendered on the 7th, viz: $283 60, and the stamps $36 50, upon which you will deliver me the deed; the question of what further sum my client is to be paid to be left open for the decision of the court, at the opening in November, on a contradictory rule; if more is to be paid, I will pay it on that decision.

Respectfully,

THOMAS H. DURANT,
18, *Carondelet street.*

U. S. Circuit Court for the eastern district of La., parish of Orleans.

Document annexed to Fi Fa.

U. S. AMERICA:

I, Theodule Fagot, special d'y marshal, do hereby certify, that I have this day seized and taken into my possession the case of No. 3,646—R. Patterson *vs.* Medora A. McGee & *als.*—the following property to wit:

A certain tract of land, established and cultivated as a sugar
45 plantation; one sugar-house 100 feet long on 40 wide, with steam machinery complete; one cotton-gin and engine; one stable that can hold 30 mules; twenty negro cabins; one main house and out buildings, in good order; thirty mules; twenty two ploughs; nine carts; eight set of collars and chains; one hundred and thirty acres of plant canes; thirty acres of ratoons, and two hundred acres of cotton; one hundred and thirty acres of corn.

THEO. FAGOT,
Sp'l Deputy Marshal.

Witnesses:
(Signed) A. MESEROOLE,
" W. H. LANAGAN.

New Orleans, May 15th, 1866.

I, B. P. Drennen, the part owner and agent of the properties specified in the inventory, do now declare that said inventory contains a true and correct statement of the stock, farming utensils and crops, and all other implements existing on the said plantation, and do now accept as a true inventory the same; is a representation of the property this day entrusted to him as U. S. marshal's keeper.

(Signed) B. P. DRENNEN.

New Orleans, May 31st, 1866.

U. S. Circuit Court.

46 *Document attached to Fi Fa.*

ROBERT PATTERSON
vs.
THO. L. MCGEE.

NEW ORLEANS, 26*th May.* 1866.

To the U. S. Marshal, C. Bullett, esq., and his keeper of the "Aurora" plantation:

Please give to Benjamin P. Drennen full possession and control of

the Aurora plantation. We appoint him the keeper thereof, he agreeing to act as such without pay; and for so doing this shall be your warrant.

Resp'y, Y. O. S.,

(Signed) DURANT & HORNOR,
Att'eys for Plff.

I accept.

(Signed) B. P. DRENNEN.

Document attached to Fi Fa.

NEW ORLEANS, *5th July*, 1866.

C. BULLETT Esq., U. S. Marshal.

DEAR SIR: I will make no objection to your making title to
47 Gen'l Patterson of the McGee property, Gen'l Patterson assuming in the act to satisfy the debt due by McGee to Pierre Hoa, my client.

Yours truly,
P. H. MORGAN.

Document annexed to Fi Fa.

R. PATTERSON
vs.
MEDORA A. MCGEE. } No. 3,646.

Expenses to seize inventory and place keeper:

Horse & buggy to go and return	$5,00
Ferry 15cts. Dinner $1	1,15
Advance to Mesersoole, keeper	3,00
Two days service	10,00
	$19,15

Received the above amount from C. Bullett, U. S. Marshal, this 16th day of May, 1891.

THEO. FAGOT.
Spec'l D'y U. S. Marshal.

48 United States Circuit Court.

Intervention and 3rd opposition of Pierre Hoa, filed June 26th 1866.

ROBERT PATTERSON
vs.
MEDORA MCGEE
and husband.

And now, into this honorable court comes, by his undersigned counsel, Pierre Hoa, a citizen of the State of Louisiana, residing in

the parish of Orleans, and intervening in his own behalf in the above-entitled cause by way of third opposition, respectfully represents :

That on the 23d April, 1853, by public act passed before A. Mazureau, then a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and sworn, he sold unto Medora A. Lyons, wife of Thomas L. McGee, the defendants in the above entitled cause, then residing in the city of New Orleans, a certain tract of land, established and cultivated as a sugar plantation, situated in the parish of Orleans, on the right bank of the river Mississippi,

49 at about four miles below the city of New Orleans, measuring twenty-five arpents and a half front on the said river, the fourteen arpents on the upper line having a depth of seventy arpents, and the remaining eleven and a half arpents are the lower boundery, having a depth of seventy-five arpents, said plantation being bounded above by Cazelard plantation, and below by the public road leading to the parish of Plaquemines, together with the buildings, improvements, sugar house, engine, sheds, stables, stores, carts, cattle, implements of husbandry, and other appurtenances thereunto belonging, and twenty-three mules and seven horses ; as also a number of slaves, whom it is not now necessary to designate, and three hundred and fifty-five shares of one hundred dollars each in the capital stock of the Citizens' Bank of Louisiana, secured by mortgage on the plantation and slaves referred to.

Petitioner and third opponent further represents that the above mentioned sale was made and accepted for and in consideration of the sum of ninety-five thousand dollars, in part payment and deduction of which the purchaser paid, in ready money, the sum of twenty thousand dollars ; and that, in part payment and liquidation of the

50 balance the said purchaser bound herself to pay in the lieu and place of your petitioner, two several promisory notes, for the sum of seven thousand five hundred dollars each, drawn by the said vendor to the order of and endorsement by himself, both dated on the 29th January, 1850, and made pavable respectively in 3 and 4 years after date, which notes were secured by mortgage upon the above described property; and that in payment of the balance of said price, the said purchaser furnished seven several promisory notes, drawn by herself to the order of, and endorsed by, herself, all dated 23d April, 1853, as follows, to wit :

Two for the sum of two thousand five hundred dollars each, payable in one year after date; one note for the sum of five thousand dollars, payable in two years after date; and four notes for the sum of twelve thousand five hundred dollars each, payable respectively in three, four, five, and six years from date; all the said notes bearing interest at the rate of eight per cent per annum, from and after maturity, until final payment, and which said notes were signed "ne varietur" by the said notary, and delivered to your petitioner.

51 Further, he represents that in order to secure the full and punctual payment of said notes, together with the interest and costs that might eventually or contingently accrue thereon, the said purchaser did, by the act of sale aforesaid, specially mortgage and

hypothecate the plantation and slaves above referred to, and bound herself not to sell, mortgage, nor in any manner alienate the said mortgaged premises to the prejudice of his opponent. He avers that in said act of sale, the said Mistress Medora A. Lyons was assisted by her said husband, Thomas L. McGee, who was present at the time, and consented to the same, and authorised his wife to sign the same, and make the purchase aforesaid, and sign the notes aforesaid; and that said act of sale was duly recorded in the office of the Recorder of Conveyances, on the 9th May, 1853. He avers that the two notes dated April 23d, 1853, above referred to, for $12,500 each, due are five and the other six years after date, remain unpaid and in his possession, as owner thereof, although they are past due.

Further, he avers that in the above-entitled suit, the said Robert Patterson has caused the above-described plantation to be seized and sold under a fi fa therein obtained, and that same was sold on
52 Saturday, 23d June, for thirty-six thousand dollars, or thereabouts, and that the terms of said sale were cash, in U. S. Treasury notes.

Appearer respectfully represents that the principal and interest due him on the two notes above described, exceed the sum of thirty-four thousand dollars, and that he is entitled to be paid the same, by reason of his vendor's privilege above described, and the amount still due thereon, as aforesaid, in preference and by privilege over all parties whomsoever, and the plaintiff herein in particular; all of which he will make to appear on the trial thereof. Premises considered, petitioner prays that this his intervention and third opposition be filed, and that the said Robert Patterson and Cuthbert Bullett may be ordered to show cause on the of 1866, at 11 o'clock a. m., why this appearer should not be paid out of the proceeds of said sale, the aforesaid amount of the four notes above described, with the interest therein due at the time of adjudication hereof, by preference and privilege, over all persons whomsoever, and particularly over the plaintiff herein.

53 Further, he prays for general relief.

(Signed) P. H. MORGAN, *Att'y.*

26th June, 1866.

Order.

Let the petition of intervention and third opposition be filed.

(Signed) E. H. DURELL, *Judge.*

June 26th, 1866.

Marshal's return.

Received June 27th, 1866; and same day, month and year, served a copy of the within intervention of third opposition of P. Hoa on D. Bellett, U. S. marshal, in the hands of A. Baudouin, chief deputy U. S. marshal, and on Durant & Hornor, esqrs., attorneys for plaintiffs in the within named suit, at their office, No. 18. Carondelet st., in this city, in the hands of T. J. Durant. esq.

(Signed) M. EGAN, *Deputy U. S. Marshal.*

New Orleans, June 28th, 1866.

54 U. S. Circuit Court, E. D. of Louisiana.

Answer of U. S. Marshal to the third opposition of P. Hoa, filed June 30th, 1866.

ROBERT PATTERSON
vs.
MEDORA MCGEE and her husband. } No. 3,646.

And now, into court by the undersigned, his counsel, comes Cuthbert Bullett, marshal of the United States for the eastern district of the State of Louisiana, and in answer to the intervention and third opposition filed therein by Pierre Hoa, respectfully represents:

That by allegations in the third opposition of the said Pierre Hoa contained, it is claimed by him that he is a creditor of the said Medora McGee or Medora A. Lyons, wife of Thomas L. McGee, the defendants in the above-entitled cause, for a sum of money, the payment of which, with interest thereon, is secured by a mortgage bearing on the plantation seized and sold in the above entitled suit, and which said mortgage is claimed to be preferable or anterior to
55 the mortgage of the suing creditor, that by law the marshal in such a case can require from the purchaser at the sale made by him, and is to deliver over to the suing creditor; only the surplus of the price bid by him; that he is informed and believes that after the adjudication of the said plantation to the purchaser at the said sale, it became and is now, his duty, in his capacity of marshal as aforesaid, to leave in the hands of the said purchaser, out of the price bid by him, the amount required to satisfy any mortgage or privilege bearing on the said property, and which is prefered to that of the seizing creditor and to receive from the purchaser only the surplus of the said piece to be applied to the payment of the seizing creditor according; that it is further made his duty, in his said capacity of marshal as aforesaid, to pass an act of sale to the purchaser of the property, adjudicated to him within a delay fixed by law. And that he is further informed, and verily believes, that the said Pierre Hoa, intervenor and third opponent as aforesaid, has no right in law to intervene or proceed by way of third opposition in the premises, or to make him, the said marshal, a party to the said proceeding for any purpose whatever. Wherefore the said Cuthbert Bullitt,
56 U. S. marshal as aforesaid, now excepts to the said proceeding against him, and prays that the same may be rejected and he be hence dismissed with his costs.

In the Circuit Court of the United States for the sixth circuit and eastern district of Louisiana.

Answer of R. Patterson to 3rd opposition of P. Hoa, filed June 30th, 1866.

ROBERT PATTERSON
vs.
MEDORA A. MCGEE. } No. 3,646.

And now, into this honorable court comes, by his counsel, Robert Patterson, the above named plaintiff, a citizen of the State of Penn-

sylvania, and for answer to the petition of intervention and third opposition of Pierre Hoa, a citizen of the State of Louisiana, says that he denies all and singular the various allegations in said petition which are material to charge him with indebtedness to the said Hoa, except as hereinafter admitted.

And further answering, your respondent says that having
57 obtained judgment against the above defendant McGee in this court, he did levy a fi fa on the said Aurora plantation and cause the same to be sold by the marshal of the United States to satisfy said judgment of thirty-five thousand dollars with interest, costs, and fees, as will fully appear by the judgment of record herein, which judgment operated as a mortgage, and all of the costs and expenses as a privilege of the higest character in law on the said Aurora plantation.

Your respondent further shows, that on the 23d day of June, 1866, at the public crying by the United States marshal, he, respondent, bought said Aurora plantation for the price of thirty-six thousand two hundred dollars, out of which sum respondent undertook, according to law and the proclamation of the said United States marshal, to pay whatever sum might be due to Pierre Hoa, alledged to be a creditor of the defendant McGee, with a mortgage and vendors' privilege on the said Aurora plantation superior to that of your respondent, the seizing creditor, but which was uncertain as to amount, and could not be and was not then exactly stated by the United States mar-
58 shal, nor appeared by the certificate of the recorder of mortgages, which at the time the said United States marshal read to the crowd of spectators and bidders at the sale.

Now, your respondent further shows that in the suit No. 17,906, of the honorable the Sixth District Court of New Orleans, on the twentieth day of April, 1866, the said Pierre Hoa obtained judgment against the said defendant, McGee, for the sum of twenty-five thousand dollars, with interest at eight per centum per annum from the second day of April, 1862, until final payment; and this is the same debt now claimed by said Hoa in his petition herein.

And your respondent further shows that on the twelfth day of April, 1866, the said Pierre Hoa, together with Thomas L. McGee, Medora L. McGee, and one Benjamin S. Drennen, a citizen of the State of Louisiana, entered into an agreement, substantially of the following effect, to wit: The said Medora McGee acknowledged herself to be indebted to the said Pierre Hoa in the sum of twenty-five thousand dollars, amount of two mortgage notes, with eight per cent. interest thereon from the twenty-third day of April, 1862, until paid, as more
59 fully appears; it was then stated, from the suit of Pierre Hoa *vs.* Mr. and Mrs. McGee, then pending before the Sixth District Court of New Orleans, in which suit it was then and there agreed to let judgment go against her by default, and be entered up in due course of law; and it was then further agreed between the aforesaid parties, that in consideration of the sum of one thousand dollars which the said Pierre Hoa acknowledged to have received from the said McGee, and the delivery to him, Hoa, in ownership, of

a promissory note for the sum of two thousand five hundred dollars, made by the said Benjamin P. Drennen, and payable on the first day of January, 1867, he, the said Hoa, bound himself not to issue execution on the judgment which he was then to obtain against the McGees in the said case, in the Sixth District Court, until the first day of January, 1867; and it was then and there further agreed, that in case of the punctual payment of the above-described promissory note of twenty-five hundred dollars, and the further sum of two thousand five hundred dollars, which the said Benjamin P.
60 Brennen then and there agreed to pay to the said Pierre Hoa, also on the first day of January, 1867, for account and on behalf of the said McGees, the said Pierre Hoa consented to postpone the execution of said judgment until the first day of January, 1868; and it was then and there further agreed that in case the said Benjamin P. Drennan should likewise pay to the said Pierre Hoa, for the account of the said McGees, on the first day of January, 1868, an additional sum of two thousand five hundred dollars, and which the said Drennan then and there promised to pay to the said Hoa, he, the said Hoa, consented to another delay of execution until the first day of January, 1869; and it was then and there further agreed between the said parties, that the said sum of one thousand dollars paid, and the said notes of Benjamin P. Drennan, when paid, should be credited on the judgment of said Hoa against the McGees.

And your respondent further shows that the above agreement was entered into by the parties to it without the knowledge and consent of your respondent, nor was any knowledge of it conveyed to him until he seized the Aurora plantation under his writ of fi fa, in
61 May, 1866, when he found the said plantation in possession of the said Benjamin P. Drennen, who claimed the right of holding the same under a lease which had been made between himself, Drennen, and the said McGees, on the twelfth day of December, 1865, by which they leased the said Aurora plantation to the said Drennan for the term of three years, ending first of January, 1869, which lease had been ratified, confirmed, and acquiecsed by the aforesaid Pierre Hoa in the agreement of twelfth April, 1866, and both of which, viz, the agreement and the lease, had been made without the knowledge or consent of respondent, and without any notice to him whatever.

Now, your respondent further shows that by reason of the above-described acts and doings of the said Pierre Hoa, he has suffered great injury; that by said acts of Hoa the value of the Aurora plantation at a marshal's sale has been greatly diminished, to wit, to the extent of ten thousand dollars and upwards, which have thus been lost to your respondent, who was compelled to purchase the said plantation to save himself, as the McGees had no other property and had left the country permanently; that by reason of the above-
62 described acts and doings of the said Pierre Hoa, he has novated his debt due by the McGees, and has voluntarily placed himself in such a position that he cannot subrogate this respondent to his rights, on payment of the debt, against the McGees, and has for-

feited his right of mortgage and privilege, entitling him to be paid before this respondent out of the proceeds of the Aurora plantation, and can now only be paid after this respondent, and with a diminution of his, the said Pierre Hoa's, credit of ten thousand dollars and upwards, as aforesaid.

Wherefore, your respondent prays, the premises being duly considered, that the prayer of the said Pierre Hoa's intervention be rejected; that respondent be decreed to have a privilege and mortgage on the Aurora plantation's proceeds of sale for his costs and debt, superior to that of the said Hoa; that Hoa be decreed to be an ordinary creditor only, with diminution of his debt by the sum of ten thousand dollars; and he prays for all other and general relief.

(Signed) THOMAS J. DURANT,
For Respondent.

63 *Order intervention fixed for trial.—From the minutes of November 12th, 1866.*

ROBERT PATTERSON
vs.
MEDORA MCGEE *et al.* } No. 3,646.

On motion of P. H. Morgan, esq., of counsel for Pierre Hoa, ordered, that the intervention and third opposition herein of said Hoa be assigned for trial for Friday next, 16th instant, at 11 a. m., and that all parties in interest be notified thereof.

Circuit Court of the United States for the fifth judicial circuit and district of Louisiana.

Notices of trial.

R. PATTERSON
vs.
MEDORA A. MCGEE *et al.* } No. 3,646.

You are hereby notified that the intervention and 3d opposition of Pierre Hoa, in this case, is assigned for trial for Friday, the
64 16th day of Nov., 1866 A. D., at 11 o'clock a. m.
By order of Court.

Witness my hand and seal of the said court, at New Orleans, this 12th day of Nov., A. D. 1866.

[SEAL.] (Signed) F. B. VINOT,
D'y Clerk.

To T. J. DURANT, Esq'r,
Att'y for Plaintiff.

Marshal's return.

Received November 13th, 1866; and on the 14th day of same month and year served a copy of the within notice on Wm. S. Bene-

dict, esq., personally, at his office, No. 18 Carondelet street, in this city, he being the agent and attorney of T. J. Durant, esq'r, who is absent from this city.

(Signed) M. EGAN,
Dep'ty U. S. Marshal.

New Orleans, November, 1866.

Circuit Court of the United States for the fifth circuit and district of Louisiana.

Notice of trial.

R. PATTERSON
vs.
MEDORA A. MCGEE *et al.* } No. 3,646.

65 You are hereby notified that the intervention and 3d opposition of Pierre Hoa, in this case, is assigned for trial for Friday, the 16th day of November, 1856 A. D., at 11 o'clock a. m.
By order of court.

Witness my hand seal of the said court, at New Orleans, this 12th day of Nov., A. D. 1866.

[SEAL.] (Signed) F. B. VINOT, *D'y Clerk.*

To C. BULLITT, Esq'r, *U. S. Marshal.*

Marshal's return.

Received November 13th, 1866; and on the 14th day of same month and year served a copy of this notice in the hands of Miles Taylor, esq'r, attorney for C. Bullitt, late U. S. marshal, who is absent from this city.

[SEAL.] (Signed) M. EGAN,
Deputy U. S. Marshal.

New Orleans, November 14th, 1866.

Order continuance of intervention, from the minutes of November 13th, 1866.

ROBERT PATTERSON
vs.
MEDORA A. MCGEE *et al.* } No. 3,646.

66 On motion of P. H. Morgan, of counsel for Pierre Hoa, and on his suggesting to the court that the said Pierre Hoa has departed this life; that his succession has been opened in the Second District Court of the City of New Orleans; that he left a last will and testament, which has been duly admitted to probate in said court; and that by said last will he appointed Elizabeth Emilie de la Ronde, his wife, testamentary executrix thereof, and that she has qualified as such, it is now ordered, that the proceedings instituted herein by

the said Pierre Hoa be conducted in the name of the said Elizabeth Emilie de la Ronde, executrix, as aforesaid, and that the third opposition and rule fixed for trial this day be continued until Friday, the 23rd day of November, 1866, at 11 a. m.

U. S. Circuit Court.

Peremptory ex. of def't in rule, filed November 23rd, 1866.

ROBERT PATTERSON
vs.
MEDORA A. MCGEE *et al.* } No. 3,646.

67 And now comes Robert Patterson, defendant in rule, and pleads this his peremptory exception to the demand contained in the intervention third opposition, and rule of Pierre Hoa, and excepting, says that the mortgage and priority of privilege of said Pierre Hoa has been prescribed, and that said privilege has been lost by reason of the non-reinscription in the books of the recorder of mortgages of this parish, of the mortgage alleged to be granted by act before A. Mazureau, on 23d April, 1853, within the delay prescribed by law.

Wherefore, he prays that this peremptory exception be maintained, and said Hoa's demand rejected with costs, and for general relief.

(Signed) W. S. BENEDICT,
Att'y for Patterson.

Order continuance, from the minutes of November 23rd, 1866.

ROBERT PATTERSON
vs.
MEDORA A. MCGEE *et al.* } No. 3,646.

68 By consent of counsel, the trial of the intervention and 3rd opposition herein of Pierre Hoa is postponed until Friday next, 30th inst., at 11 a. m.

Note of evidence on the trial of 3d opposition, filed November 30th, 1866.

R. PATTERSON
vs.
MEDORA A. MCGEE *et al.* } No. 3,646.

Intervenor offered the record in this case.
Also ac't of sale and certificate, marked "K."
Also the notes, marked "L & M."
Also copy ac't of sale by marshal to Patterson.
Plaintiff R. Patterson offered agreement between P. Hoa *et al.*, marked "N."
Also lease, marked "O."
Also certificate, marked P, and the record in the case.
Henry Tete, sworn for Patterson, who proved signatures.

69 *Act of sale. Marked "K," filed in evidence for oppon't, November 30, '66.*

Sale of plantation by Pierre Hoa to Mrs. McGee.

23 April, 1853.

Before me, Adolphe Mazurean, a notary public, in and for this city and parish of Orleans, duly commissioned and sworn, and in the presence of the subscribing witnesses, personally appeared Pierre Hoa, esq'r, residing in this parish, who declared that for the consideration, and on the terms and conditions hereinafter set forth, he does, by these presents, grant, bargain, sell, convey, transfer, assign, set over, and deliver, with all legal warranties, unto Mistress Medora A. Lyons, the wife of Thomas L. McGee, residing in this city, here present, accepting and purchasing for herself, her heirs, and assigns, and acknowledging delivery and possession thereof.

1st. A certain tract of land, established and cultivated as a
70 sugar plantation, situated in the parish of Orleans, on the right bank of the river Mississippi, at about four miles below the city of New Orleans, measuring twenty-five arpents and a half front on said river, the fourteen arpents on the upper line having a depth of seventy arpents, and the remaining eleven and a half arpents on the lower boundary, having a depth of seventy-five arpents; said plantation is bounded above by the Cazelard plantation, and below by the public road leading to the parish of Plaquemines; together with the buildings, improvements, sugar-house, engine, sheds, stables, stores, carts, cattle, implements of husbandry, and other appurtenances thereunto belonging, and twenty-three mules and seven horses, &c.

2d. The following named slaves employed on said plantation, to-wit:

William,	aged	about	forty-seven	years.
Osborn,	do	do	thirty-two	do
Bernard,	do	do	thirty-two	do
Tom,	do	do	sixty-two	do
Isaac,	do	do	thirty-two	do
Richmond,	do	do	forty-seven	do
Abraham,	do	do	sixty-two	do
Ruben,	do	do	thirty-five	do
Charles Fig,	do	do	forty-seven	do
Jerry,	do	do	fifty-five	do
Jim,	do	do	twenty-three	do
71 Bencal,	do	do	thirty-six	do
Francisque,	do	do	forty-seven	do
Big Joseph,	do	do	sixty two	do
Auguste,	do	do	thirty	do
Jerry Mulatre,	do	do	forty-two	do
Charles Verret,	do	do	twenty-two	do
Little William,	do	do	thirty-two	do
John American,	do	do	forty-two	do

Joseph Mularte,	do	do	fifty-two	do
Henry,	do	do	twenty-six	do
Moses,	do	do	twenty-six	do
Smith,	do	do	twenty-six	do
John Chaland	do	do	forty-two	do
Bob,	do	do	forty-two	do
Coco,	do	do	forty-two	do
Davis,	do	do	forty-two	do
Doy,	do	do	thirty-two	do
Big George,	do	do	sixty	do
Dimbo,	do	do	thirty-six	do
Ebram,	do	do	thirty-two	do
Gaspard,	do	do	twenty-seven	do
Codio,	do	do	twenty-seven	do
Gabriel,	do	do	thirty-two	do
Wesley,	do	do	twenty	do
Baptiste,	do	do	twenty	do
Macoy,	do	do	fifty-two	do
Sophie,	do	do	thirty-two	do
Bonhomme,	do	do	fourteen.	do
Squire,	do	do	thirty-six	do
72 Hippolyte,	do	do	twelve	do
Nelson,	do	do	nine	do
Noel,	do	do	four	do
Lise,	do	do	twenty-six	do
Charlotte,	do	do	thirty-seven	do
Charlotte,	do	do	thirty	do
Esther,	do	do	four	do
Louisa,	do	do	thirty	do
Rose,	do	do	fourteen	do
Boy,	do	do	thirteen	do
Warlington,	do	do	five	do
Felicite,	do	do	one	do
Felicite,	do	do	thirty-six	do
Angele,	do	do	thirty-five	do
Henriette,	do	do	twenty-two	do
Fanny,	do	do	thirty-six	do
Laurent,	do	do	three	do

3d. And three hundred and fifty-five shares of one hundred dollars each, in the capital stock of the citizens' Bank of Louisiana, secured by mortgage on the plantation and slaves herein above-described.

To have and to hold the said plantation, slaves, stock and appurtenances unto the said purchaser, her heirs and assigns to their proper use and behoof forever; the said vendor hereby subrogating said purchaser to all the rights and actions of warranty, which he
73 has, or may have, against his vendor, and against any and all previous vendors and owners of said plantation, slaves, and shares.

This sale is made and accepted for and in consideration of the total

price and sum of ninety-five thousand dollars, in part payment and deduction of which the purchaser has paid in ready money, in the presence of the undersigned notary and witnesses, the sum of twenty thousand dollars to the said vendor, who hereby acknowledges the receipt thereof, and grants a full and entire discharge and acquittance for the same.

In part payment and liquidation of the balance the said purchaser binds herself to pay in the lieu and place of the said vendor, and to his full discharge and acquittance, two several promissory notes for the sum of seven thousand five hundred dollars each, drawn by the said vendor to the order of, and endorsed by, himself, both dated on the twenty-ninth of January, eighteen hundred and fifty-one, and made payable respectively in three and four years after date, bearing interest, at the rate of eight per cent. per annum, from maturity till paid, which said notes are secured by mortgage on the above-
74 described property, and the same are identified with an act of sale passed in this office on the twentieth day of February, eighteen hundred and fifty-one, which said mortgage the present purchaser assumes.

In payment of the balance of said price, the said purchaser has furnished seven several promissory notes drawn by herself to the order of, and endorsed by herself, all dated this day, two for the sum of two thousand five hundred dollars, each payable in one year after date, one note for the sum of five thousand dollars, payable in two years after date, and four notes for the sum of twelve thousand five hundred dollars, each payable respectively in three, four, five, and six years from date, all the said notes bearing interest at the rate of eight per cent. per annum from and after maturity, until final payment, which said notes, after having been marked "ne varietur," and countersigned by me, notary, for the purpose of identification with these presents, were handed over to and accepted by the said vendor, who hereby acknowledges the receipt thereof.

Now, therefore, in order to secure the full and punctual payment of said notes, together with the interest and costs that may
75 eventually and contingently accrue thereon conformably to their tenor, without the privilege of renewing said notes, or extending the payment thereof beyond the time now fixed for their maturity the said purchaser does hereby specially mortgage and hypothecate the plantation and slaves herein described and conveyed, in favor of her said vendor, and of any future holder or holders of the above-described promissory notes, binding herself not to sell, mortgage, nor in any manner alienate the said mortgaged premises, to the prejudice of this mortgage, and hereby confessing judgment upon each of the said described notes herewith indentified.

The said purchaser, in order more effectually to secure the payment in principal, and eventual interest of the above-described notes for seven thousand five hundred dollars, two thousand five hundred dollars, and two thousand five hundred, forming the first instalment, does hereby specially mortgage in favor of said vendor, and of the future holders of the said notes, the following described slaves, to wit:

Frank,		aged	about	thirty-eight	years.
Judy		do	do	thirty-six	do
	Preston	do	do	fourteen	do
76	Helena	do	do	eleven	do
	California	do	do	six	do
Douglas		do	do	three	do
Infant girl		do	do	one	do
Washington		do	do	thirty-nine	do
Tanny		do	do	thirty-five	do
Adeline		do	do	fourteen	do
Randal		do	do	twelve	do
Virginia		do	do	six	do
Henry		do	do	three	do
David		do	do	forty-three	do
Caroline		do	do	twenty-six	do
Alice		do	do	eleven	do
Frank, jr.		do	do	six	do
Elizabeth		do	do	three	do
Infant boy		do	do	six months	do
Brenkly		do	do	forty-one	do

This additional mortgage is hereby accepted by the said vendor.

By reference to the annexed certificates of the register of conveyances and recorder of mortgages of this parish, it appears that the said vendor has not alienated the above-described property and slaves, and that there are no other mortgages recorded in his name than the following, to wit:

1st. The mortgage granted by him jointly with A. Hoa, J.
77 C. Jourdain, E. Hoa and P. Jourdan, by an act passed before Theodore Seghers, notary, on the 5th of October, 1836, to secure eight hundred and ten shares of the stock of the Citizens' Bank of Louisiana, and the payment of any and all loans of money.

2ndly. The assumption of said mortgage in the names of P. Hoa and A. Hoa, for seventy-one shares, resulting from an act passed before F. Grima, notary, on the twenty-seventh January, 1838.

3d. The assumption of said mortgage in the names of P. Hoa and A. Hoa, for seventy-one shares, resulting from an act passed before the same notary, on the eighth of February, 1838.

4th. The assumption of said mortgage so far as granted by E. Hoa, and resulting from an act passed before L. M. Taney, parish judge and notary public for the parish of St. James, on the fourteenth of August, 1838.

5th. The mortgage resulting fom an act passed in this office, on the twentieth of February, 1851, securing the payment of two notes for seven thousand five hundred dollars each.

6th. The general mortgage in favor of Elizabeth Emilie De
78 la Ronde, the wife of said vendor, resulting from their marriage contract, passed before F. de Armas, notary public, on the fifteenth of April, 1828.

The said purchaser assumes the mortgages in favor of the Citizens'

Bank of Louisiana for three hundred and fifty-five shares of stock herein conveyed, and binds herself to pay the annual contribution of one dollar per share in favor of the said bank, hereby likewise assuming all the liabilities resulting from the several acts granted to secure the said three hundred and fifty-five shares of stock.

Whereas, the said vendor has never obtained any loan of money upon the said three hundred and fifty-five shares of stock from the said Citizens' Bank of Louisiana, it is now expressly agreed and well understood that, in case the said institution should become enabled to loan and advance money to its stockholders in accordance with the provisions of its charter, the purchaser shall not avail herself of her credit, nor obtain any loan of money from said bank upon her stock, plantation, and slaves above described, except it should be for the express purpose of applying the proceeds of the loan thus obtained to the payment of the notes forming the second or any subse-
79 quent instalment.

Whereas, the slaves mortgaged by the said purchaser, as additional security for the payment of the first instalment, are now employed in the plantation of James E. Old, in the parish of Carroll, it is agreed and understood, that she, the said purchaser, shall keep said slaves in said parish of Carroll until they shall have taken off the present cotton crop; and the said purchaser binds herself to remove said slaves and to place them upon the plantation herein conveyed, as soon as they can conveniently be removed; that is to say, after the crop now pending shall have been taken off.

And next, personally appeared Mistress Elizabeth Emilie de la Ronde, the wife of said Pierre Hoa, by him duly authorised, who acknowledges that she is fully aware of the rights of married women on the property of their husbands, which said rights, I, the said notary, did carefully explain to her, out of the presence and hearing of her said husband, as it was my duty to do; and further declare, that of her own free will, she does by these presents renounce in favor of the said Mistress McGee, accepting the same, all the
80 matrimonial, dotal paraphernal and other rights and privilege, which, by virtue of the law, or otherwise, she may have on the property and slaves hereby conveyed. 1o. For the restitution and replacing of such dotal effects as were her property previous to marriage. 2o. For the restitution and replacing of such dotal effects as she may have since acquired by succession or donation. 3o. For the payment of such of her paraphernal property, as shall have been appropriated by her said husband to his own use, or by which he may, in his individual capacity have profited. 4o. As a security for the obligations of her husband as usufructuary of her paraphernal property. 5o. As an indemnity for debts which she may have contracted with her husband, as also for the purpose of replacing said part of her separate property as may have been sold; and generally in virtue of all causes whatsoever.

The said plantation was acquired by the said Pierre Hoa in the following manner, to wit:

Barthelemy Jourdan purchased in his own name, the whole of said

land from Paul Lanusse, by an act passed before Pierre Pedesclaux, a notary public of this city, on the 26th of April, 1809, with the understanding, however, that the same was purchased as the
81 property of the copartnership then existing between himself, Pierre Jourdan, and Rosalie Jourdan, the wife of Manuel Hoa. Pierre Jourdan and Rosalie Jourdan having died, the partnership continued between the said Barthelemy Jourdan and the heirs of the two deceased partners, namely; Pierre Jourdan, and J. E. Jourdan, the children and heirs of Pierre Jourdan; and Pierre Hoa, Albert Hoa, Edmund Hoa, and Apoline Hoa, the children and heirs of Rosalie Jourdan, as the whole is set forth in a certain act passed before Felix Grima, notary public of this city, on the first of September, 1834. Barthelemy Jourdan sold his third of said plantation and slaves to Pierre and Albert Hoa, by two acts passed before the same notary, on the twenty-seventh of January, and eighth of February, 1838; the said Pierre Jourdan and J. E. Jourdan, sold their third to said Pierre and Albert Hoa; Edmund Hoa having died intestate in 1838, his share of said plantation and slaves became the property of Albert Hoa, Pierre Hoa, and Apoline Hoa, his sole heirs. And Apoline Hoa sold her original share, as well as the portion inheritated by her from Edmund Hoa, to the said Pierre and Albert Hoa, by an act passed before Tancy, judge and ex-officio notary for the
82 parish of St. James, the date of which act is not known. Pierre and Albert Hoa having become sole owners of the said plantation, remained in partnership until the year 1845, when Albert Hoa died, leaving an only child, Edmond Albert Hoa; with the view to effect a partition between the said Pierre Hoa and the minor, Edmond Albert Hoa, the said plantation and slaves were sold, and the said Pierre Hoa became the purchaser of the undivided half belonging to said minor by an act passed in this office on the twentieth of February, 1851.

The vendor binds himself by these presents to transfer the said three hundred and fifty-five shares of stock to the said purchaser on the transfer book of said Citizens' Bank of Louisiana and the said purchaser, who assumes all the mortgages hereinbefore recited, and which secure the amount of stock herein transferred, binds herself to comply with such formalities as may be required by said bank, in order that she may be recognised and accepted as a stockholder in the lieu and place of said Pierre Hoa, to all intents and pur-
83 poses.

This act of sale is hereby accepted by the said Mistress Medora A. Lyons, the wife of said Thomas L. McGee, of this city, here present, and authorizing his said wife; and the said Thomas L. McGee, and Mrs. Medora A. Lyons, his wife, hereby declare and acknowledge that the purchase of said plantation and slaves is made by the said [Mc] McGee, with her own paraphernal means, consisting of lands and slaves inheritated from her father's estate, and with loan of money obtained by her by mortgaging the said land and slaves.

The purchaser binds herself to take up the notes subscribed by the

vendor, in favor of the Citizens' Bank of Louisiana, for three hundred and fifty-five dollars each, and furnished for his annual contributious to said bank.

Personally appeared, Messieurs John Williams and Augustin W. Walker of this city, who, having read what is above written, declared that they hereby guarantee to the said vendor, that the purchaser shall not in any manner dispose of any part of the above-described property and slaves to the prejudice of the mortgage herein
84 retained. And the said sureties shall not be bound in case of the death of the said slaves, or in case of any unforeseen accident to said negroes.

All the parties hereto acknowledged that the vendor's mortgage and privilege, shall extend not only to the lands and all the slaves herein described, but to all the appurtenances of said plantation including the improvements, houses, negro cabins, implements of husbandry, cattle stock, and all other property and effects attached, and appartaining to said plantation.

Done and passed in my office, at the city of New Orleans, on this twenty-third of April, eighteen hundred and fifty-three in the presence of Francis Meteye and Francis V. Duplessis, competent witnesses who hereto subscribe their names with the parties, and me, said notary, after reading the whole.

(Original signed) EMILIE HOA.
PIERRE HOA.
MEDORA A. McGEE.
T. L. McGEE.
A. W. WALKER.
JOHN WILLIAMS.
85 F. METEYE.
FRANCIS W. DUPLESSIS.

A. MAZUREAU.
Not. Pub.

On the original of the foregoing act is written.

"I, register of conveyances, certify that the present act has been this day recorded in my office, in book No. 61, fos. 10, 11, 12 and 13."

"New Orleans, May 9th, 1853."

(Signed) F. B. VINOT, *D'y R'r.*

I, the undersigned, Ernest Eude, a notary public, duly commissioned and sworn in and for the parish of Orleans, and the city of New Orleans, State of Louisiana, do hereby certify the foregoing act and certificate to be true copies of the original act, and of the original certificate, on file in the notorial records of Adolphe Mazureau, a notary public in and for the parish of Orleans, which are in my possession as custodian thereof.

In testimony whereof, I, said notary, hereunto set my hand and affix my seal of office, at the city of New Orleans, this sixteenth day

of April, in the year of our Lord one thousand eight hundred
86 and sixty-six, and of the independence of the United States of America the ninetieth.

[SEAL.] E. EUDE,
Notary Public,

General custodian of all notarial records of notaries out of office, and of those of re-appointed notaries who up to this date, left the same in my possession.

[5-ct. stamp cancelled.]

Certificate from mortgage office marked "K."—Offered by opponent.

OFFICE OF MORTGAGES, *November* 30, 1866.

The undersigned deputy recorder of mortgages for the parish and city of New Orleans, State of La., certifies, that by an act passed before A. Mazureau, notary, dated 23d April, 1853, Medora A. Lyons, wife of Tho's L. McGee, has bought of Pierre Hoa:

1st. A certain tract of land situate in the parish of Orleans, on the right bank of the Mississippi river, at about four miles below the city of New Orleans, measuring 25 arpents and a half front
87 on said river by an irregular depth.

2d. And a large number of slaves; and to secure part of the purchase price of said plantation and slaves, a special mortgage was thus granted on the same, which was recorded in the books of this office in B. 62, fo's 237 and 238, under date of the fifth of May, 1853, and re-inscribed in B. 79, fo's 106 and 107, under date of the first October, 1863.

New Orleans, November 23d, 1866.

[SEAL.] (Signed) CH'S E. LEUES,
D'y Recorder.

[5-ct. stamp cancelled.]

Document "L."

NEW ORLEANS, *April 22d,* 1853.

[$12,500 00.]

Six years after date I promise to pay to the order of myself the sum of twelve thousand five hundred 00-100 dollars, with interest at eight per cent. per annum from maturity till paid. Value received. Payable at .

MEDORA A. McGEE.
To authorize my wife, T. L. McGEE.

Ne Varietur, New Orleans, April 23d 1853.

A. MAZUREAU,
Not. Pub.

Written across the note: The mortgage securing the pay-
88 ment of this note has been released as far as it effects the slave Harriet, by an act passed before me on the 26th November, 1858.

A. BOUDOUSQUIE, *Not'y.*

The payment of the note is posponed for one year from the twenty-third instant, interest being paid in advance.
New Orleans, April 26th, 1859.

P. HOA.

Endorsed: The payment of this note is postponed for one year from the 23rd instant, the interest having been paid in advance.
New Orleans, April 26th, 1860.

P'R. HOA.

Endorsed: The payment of the within note is postponed for one year from the 23rd day of April, 1861, interest paid in advance.
New Orleans, July 27th, 1861.

PIERRE HOA.

Endorsed: Medora A. McKee, to authorize T. L. McKeee.

P'E HOA.

89 Endorsed: No 17,906. 6th Dist. Court of N. O. Filed 8th Febr'y, 1866.

L. E. LEHMANN,
D'y Clerk.

Endorsed: 9,572. Medora A. McGee. 12,500. April 23, '62.

Document "M."

[$12,500 00.]

NEW ORLEANS, *April* 23*d*, 1853.

Five years after date I promise to pay to the order of myself the sum of twelve thousand five hundred dollars, with interest at eight per cent. per annum from maturity till paid. Value received. Payable at

MEDORA A. McGEE.

To authorize my wife, T. L. McGEE.

Endorsed: Ne varietur. New Orleans, April 23, 1853.

A. MAZAURAU,
Not. Pub.

Written across the note: The payment of this note is hereby postponed to the twenty-sixth day of April, eighteen hundred and fifty-nine, fixed. Interest being settled up to that date.
New Orleans, 26th April, 1858.

P'RE HOA.

The mortgage securing the payment of this note has been released as far as it affects the slave Harriet, by an act passed before
90 me on the 26th of November, 1858.

AD. BOUDOUSQUIE, *Not'y.*

No. 17,906. 6th Dist. Court of N. O. Filed 8th Feb'y, 1866.
L. E. LEHMANN,
D'y Clerk.

Endorsed: The payment of the within note is postponed for one year from the 23d instant, the interest being paid in advance.
New Orleans, April 26th, 1859.
P'RE HOA.

Endorsed: The payment of this note is postponed for one year from the 23rd instant, the interest having been paid in advance.
New Orleans, April 26th, 1860.
P'RE HOA.

Endorsed: Medora A. McGee, to authorize T. L. McGee.
P'RE HOA.

Endorsed: The payment of the within note is postponed for one year from the 23d day of April, 1861, interest being paid in advance.
New Orleans, July 27th, 1861.
P'RE HOA.

Endorsed: 9,571. Medora A. McGee. 12,500. April 23, '64.

91 Act of sale by Marshal to Patterson.

Sale to Robert Patterson.

ROBERT PATTERSON
vs.
MEDORA A. MCGEE, *et al.* } No. 3,646.

UNITED STATES OF AMERICA,
Eastern District of Louisiana,
City of New Orleans:

Whereas I, Cuthbert Bullitt, Marshal of the United States for the eastern district of Louisiana, under and by virtue of a writ of fieri facias, issued and to me directed by the honorable the Circuit Court of the United States for the sixth circuit and eastern district of Louisiana, on the 29th day of March. A. D. 1866, in the suit of R. Patterson *vs.* Medora A. McGee *et als.*, No. 3,646, of the docket of the said court, did seize and take into my possession the following described property, viz:

A certain tract of land, established and cultivated as a sugar plantation, situate in the parish of Orleans, on the right bank of the river Mississippi, at about four miles below the city of New Orleans, being twenty-five and a half arpents front on said river, fourteen
92 arpents of which, on the upper side, have a depth of seventy arpents, and the remaining eleven and a half arpents on the lower side have a depth of seventy-five arpents, bounded on one side by P. Cazelar's plantation, and on the other side by the public

road leading to the parish of Plaquemines, together with all the buildings and improvements thereon, viz:

1st. One sugar-house, with steam machinery and apparatus.
2d. One cotton-gin and engine.
3d. One stable.
4th. Twenty negro cabins.
5th. One main house and out-buildings; and also the following stock, crops, &c., &c., viz: Thirty No. 1 mules, twenty-two ploughs, nine carts, eight set of collars and chains; and also the following crops, viz: One hundred and thirty acres plant canes, thirty arpents ratoon canes, two hundred acres of cotton, on one hundred and thirty acres corn.

When, after all the previous and legal requisites of law had been fulfilled and complied with, I advertised for sale the aforedescribed property according to law, by giving notices of the sale in the New Orleans Times, on the 19, 26 May, 2, 9, 16 and 23d June, 1866, and
93 by posting copies of said notice, from the 19th May, 1866, to the 23rd June, 1866, on the door of the sugar-house on said plantation, on the door of the court-house in Algiers, announcing said sale of the aforedescribed property, to take place at the entrance to the custom-house, on old Levee street, next entrance to the post-office in this city, on Saturday, the 23rd June, 1866, at 12 o'clock m. When and where, after having further complied with all the previous legal requisites of law, in such cases made and provided, and after the aforementioned and described properties had been duly appraised, I did expose the said property at public auction, according to law, at the entrance to the custom-house, on old Levee street, on the said Saturday, the 23rd day of June, 1866, at 12 o'clock m., having first read to the by-standers the certificate of the recorder of mortgages for the parish of Orleans, of date the 23rd June, 1866, that the mortgages now standing recorded against the said def't, the said Medora A. McGee *et al.*, are only the following, viz:

B. 62, fo. 237.—1st. The mortgage by her granted per act before A. Mazureau, notary, dated 23rd April, 1853, in favor of Pierre Hoa, her vendor, to secure $60,000, with all eventual interest and costs, on which $10,000 has been paid, as appears from said
92 records; and the [and the] reversion by her assumed, per same act, up to $35,500 of shares of stock of the Citizen's Bank of Louisiana, and all contributions on said stock, recorded May 5th, 1853, and re-inscribed B. 97, folio 107, on the 1st October, 1863, of the following mortgages, to wit:

B. 34, fo. 105. 1st. The one granted by Albert and Edmond Hoa and Pierre Hoa and others, per act before Seghers, notary, dated 5th October, 1836, in favor of said bank, to secure $81,000 of shares, and all loans thereon and interest.

B. 38, fo. 387. 2d. The reversion of the same, taken by Pierre and Albert Hoa, up to the amount of $7,100 of shares, per act before Grima, notary, dated 27th January, 1838.

B. 38, fo. 436. 3d. The reversion of the same, taken by Pierre and Albert Hoa, per act before Grima, notary, date 8 Feb'ry, 1838, up to the amount of $7,100 of shares.

B. 39, fo. 482. 4th. The reversion of the same, assumed by Albert and Pierre Hoa, per act before Taney, judge and notary for the parish of St. James, dated 4th August, 1838.

B. 58, fo. 522. And 5th. The reversion of said mortgage, taken by Pierre Hoa, per act before Mazureau, notary, dated 20th February, 1851.

B. 72, f. 37. 6th. The mortgage granted by said Mrs. McGee, per act before Mazureau, notary, dated 20th July, 1858, in
93 favor of R. Patterson & Co., of Philadelphia, to secure $35,000, with all interests and costs.

B. I, 7, fo. 90. 7th. The general one in favor of John Wigham, per judgment of the United States Circuit on the 11th March, 1852, for $2,738 17-100, with interests and costs, *vs.* W. B. Partie *vs.* Thomas L. McGee in solido.

B'k I, M, No. 7, fo. 110. The general one in favor of Henry E. Morton, recorded on the 4th May, 1852, resulting from a judgment rendered [rendered] by the same court on the 17th April, 1852, for the sum of $1,030, with interest stipulated in said judgment, and costs of suit against the same in solido.

B'k J, M, No. 7, fo. 129. 9th. The general one in favor of J. M. Wilson, recorded on the 31st May, 1852, for the sum of $8,000, with interest, stipulated in said judgment, and damage and costs of suit against the same in solido; to which mortgage S. O. Nelson & Co. have been subrogated, by order of said court, dated 3rd April, 1858.

B. I. M, No. 11, fo. 638, No. 10. The general one in favor of Richard C. Lawless, recorded on the 31st March, 1866, resulting from a judgment rendered by the 4th District Court on the 27th March, 1866, for the sum of $2,565 36-100, with interest stipulated in said judgment, and costs of suit against T. L. McGee.

94 B'k I, M, No. 11, fo. 638. 11th. The general one in favor of Davey & Wheeler, recorded on the 31st March, 1866, resulting from judgment rendered by the 4th District Court on the 14th March, 1866, for the sum of $225, with interest, stipulated in said judgment, and costs of suit against Thomas L. McGee.

B'k I, M, No. 11, fo. 641. 12th. The general one in favor of Arthur Shiff, recorded on the 14th April, 1866, resulting from a judgment rendered by the 6th District Court on the 27th March, 1866, for the sum of $2,500, with interest, stipulated in said judgment, and costs of suit against the said defendant, Mrs. McGee.

When and where Thomas Jefferson Durant, attorney for plaintiff in said suit, and on behalf of said pl'ff, Robert Patterson, a resident of Pennsylvania, being the highest and last bidder on the hereinbefore described property, the same was adjudicated to him for the account of the said Robert Patterson for the price and sum of thirty-six thousand two hundred dollars, cash, which amount of adjudication

the said purchaser retained in his hands for the following purposes, viz:

1st. To satisfy to the first mortgage, and with vendor's privilege, Pierre Hoa, a sum of thirty-three thousand three hundred and
95 thirty-three 33-100 dollars due him as per certificate of mortgage above recited, said sum more amply specified in an intervention on file in said suit.

2dly. The said purchaser paid to me, marshal as aforesaid, all the clerks' and marshals' costs and expenses due under said writ, and binds himself to pay all the taxes due on said property, such as parish, State, U. S. direct, or any other taxes; and also to pay to the freedmen employed on said plantation any amount which might have been legally due to them on the day of sale, the 23rd of June, 1866; and the said purchaser hereby declares that he exhonerate me, marshal as aforesaid, from any or all responsabilities as regards the payment of such taxes and claims.

Now, know therefore, all men by these presents, that I, the United States marshal aforesaid, in consideration of the within adjudication and the assumption by the said purchaser, and by virtue of the laws in such case made and provided, do hereby sell, transfer, assign, and set over unto the said Robert Patterson, purchaser as aforesaid, his heirs and administrators, executors, and assigns, all and singular the property hereinbefore described, with all the buildings and improvements thereon, as set forth in the appraisement on file in said
96 suit, and also the stock and utensils mentioned in said appraisements, viz: Nine carts; twelve ploughs; ten new ploughs; eight sets of collars and chains; thirty mules; one hundred and fifty cords of wood; ten spades and shovels; and forty-eight hoes, and nine wood cars, R.R., with the exception of the following stock and farming utensils set forth in said appraisement, and claimed as his private property by one B. P. Drennen, viz: Ten cords of wood; ten spades and shovels, and forty-eight hoes, &c.; four R.R wood cars.

To have and to hold the aforesaid described property unto the said Robert Patterson, the aforenamed purchaser, his heirs and assigns, as aforesaid, to them and to their proper use and behoof forever.

In testimony whereof, I have hereunto signed my name, at the city of New Orleans, this 5th day of July, A. D. 1866, and the 91st year of the independence of the United States of America.

(Signed) CUTHBERT BULLITT,
U. S. Marshal.

Signed and delivered in presence of—
(Signed) A. BAUDOUIN.
" A. BOISBLANC.

CLERK'S OFFICE.

A true copy of the original deed of sale.
97 New Orleans, July 11th, 1866.
(Signed) F. B. VINOT, *D'y Clerk.*

$3,650 internal revenue stamps affixed and cancelled.

Document "N."—Agreement filed in evidence by plaintiff, November 30th, 1866.

It is agreed between Pierre Hoa, Mrs. Medora A. McGee, wife of Thomas L. McGee, herein authorized and assisted by her said husband, and Benjamin P. Drennen, as follows, to wit:

That the said Mrs. McGee hereby acknowledges owing to Mr. Pierre Hoa the sum of twenty-five thousand dollars, amount of two mortgage notes, with eight per cent. interest thereon from the 23rd of April, 1862, until paid, as more fully appears from the suit of Pierre Hoa *vs.* Mrs. Medora A. McGee and her husband, now pending before the Sixth District Court of New Orleans, and hereby consents to let judgment by default be entered against her in said case, and confirmed in due course of law.

That Mr. Pierre Hoa, in consideration of the sum of one
98 thousand dollars, which he hereby acknowledges to have received from the said Mrs. McGee, and of the delivery to him in full ownership of a promissory note for the sum of two thousand five hundred dollars, made by Mr. Benjamin P. Drennen, and payable on the first of January, 1867, the receipt of which is also hereby acknowledged, binds himself and obligates himself not to issue execution on the judgment he shall obtain in the above-entitled case, before the first of January, 1867.

In case of the punctual payment of said promissory note at maturity and of the further sum of two thousand five hundred dollars, which the said Benjamin P. Drennen promises to pay Mr. Pierre Hoa; also on the first of January, 1867, for account and on behalf of the said Mrs. McGee, the said Pierre Hoa consents, in that event, to postpone the execution of his said judgment until the first of January, 1868.

In case the said Benjamin P. Drennen should likewise pay to the said Pierre Hoa, for the account of the said Mrs. McGee, on the first of January, 1868, an additional sum of two thousand five hundred dollars, which he, the said Drennen, promises hereby to pay
99 the said Hoa, the said Pierre Hoa consents to another stay of execution until the first of January, 1869.

It is understood that the judgment in question will be rendered as prayed for in Mr. Pierre Hoa's petition, in the suit hereinabove mentioned, and that the said sum of one thousand dollars, the note of Benjamin P. Drennen, payable in January, 1867, when paid, and the other sums, the payment of which is herein above stipulated, when actually handed to Mr. Hoa, will be credited to Mrs. McGee on the judgment which Mr. Hoa is to obtain as hereinabove stated, as so much paid on account of said judgment.

Made triplicate in the city of New Orleans, on the 12th day of April, 1866.

(Signed) B. P. DRENNEN,
" P'RE HOA.
" MEDORA A. McGEE.
" T. L. McGEE.

[10-ct. stamp cancelled.]

Document "O."—Lease, filed in evidence for plaintiff, November 30th, 1866.

AURORA PLANTATION, PARISH OF ORLEANS.
December 12th, 1865.

100 Received of Mr. Benjamin P. Drennen, the sum of seven thousand five hundred dollars in cash and his promissory note for twenty-five hundred dollars, payable first of January, 1867, this being payment in full for a one-half interest and right in and to all the moveable appurtenances and implements on this plantation, together with ten mules, and the lease of the plantation, with privilege of cutting and selling any quantity of wood for and during the term of three years, from first of January, (1866,) eighteen hundred and sixty-six, to first of January, 1869; and it is understood and agreed that this payment gives equal privilege and rights on this plantation with ourselves for that space of time, the same as if he had title to an undivided one half of the land. This receipt is connected and identified with an article of partnership drawn up and signed by the said Benjamin P. Drennen and ourselves.

(Signed) MEDORA A. McGEE.
" T. L. McGEE
" B. P. DRENNEN.

Witness:
(Signed) HENRY TETE.

[5 ct. stamp cancelled.]

Document "P."—Filed in evidence for plaintiff, November 30th, 1866.

101 OFFICE OF MORTGAGES.

The undersigned, recorder of mortgages for the parish of Orleans, State of Louisiana, certifies that, in the records of this office, there are no other mortgages standing in the name of Medora A. McGee and recorded against the property described in the printed slip.

"By the U. S. Marshal:

"*United States marshal's sale.*

R. PATTERSON
vs.
MEDORA A. McGEE *et al.* } No. 3,646.

In the United States Circuit Court for the sixth circuit and eastern district of Louisiana.

By virtue of a writ of fi. fa., issued and to me directed by the aforesaid court, on the 29th of March, 1866, I have seized, and will expose at public sale, at the entrance to the custom-house on old Levee street, next entrance

to the post-office in this city, on Saturday, the 23d of June, 1866, at 12 o'clock m., the following property, viz:

"A certain tract of land, established and cultivated as a sugar plantation, situate in the parish of Orleans, on the right bank of the Mississippi, at about four miles below the City of New Orleans, having 25½ arpents front on said river, 14 arpents of which, on the upper side, have a depth of 70 arpents, and the remaining 14½
102 arpents, on the lower side have a depth of 75 arpents; bounded on one side by P. Cazelar's plantation, and on the other side by the public road leading to the parish of Plaquemines, together with the buildings, improvements, etc., as hereinafter described, viz: One sugar-house, with steam machinery, complete and in good order; one cotton-gin and engine; 1 stable; 20 negro cabins; 1 main house and out-buildings, in good order; 30 No. 1 mule; 22 ploughs; 9 carts; 8 set of collars and chains; 130 acres of plant cane; 30 acres ratoons cane; 200 acres of corn, and all other implements as shown per the inventory of same in my office.

"Terms cash in U. S. Treasury notes.

"CUTHBERT BULLITT,

"*U. S. Marshal for the eastern district of Louisiana.*

"Marshal's Office, New Orleans."

Than the following, to wit: B. 62, fo. 237. 1st. The mortgage by her granted per act, before Mazureau, Notary, dated 23d April, 1853, in favor of Pierre Hoa, her vendor, to secure $60,000, with all eventual interests and costs, on which $10,000 has been paid, as appears from said records.

And the reversion by her assumed, per same act, up to
103 $35,500, of shares of stock of the Citizen's Bank of Louisiana, and all contributions on said stock, recorded May 5th, 1853, and re-inscribed B. 79, fo. 107, on the first of October, 1863, of the following mortgages and reversions, to wit:

B. 34, fo. 105, the one granted by Albert and Edmond Hoa and Pierre Hoa, and others, per act, before Seghers, notary, dated 5th October, 1836, in favor of said bank, to secure $81,000 of shares and all loans thereon and interest.

B. 38, fo. 387. 2d. The reversion of the same taken by Pierre and Albert Hoa, up to the amount of $7,100 of shares, per act, before Grima, notary, dated 27th January, 1838.

B. 38, fo. 436. 2d. The reversions of the same taken by Pierre and Albert Hoa, per act, before Grima, notary, dated 8th February, 1838, up to the amount of $7,100 of shares.

B. 39, fo 482. 4th. The reversions of the same, assumed by Albert and Pierre Hoa, per act, before Taney, judge, and notary for the parish of St. James, dated 14th August, 1838.

B. 58, f. 622, and 5th. The reversion of said mortgage taken by Pierre Hoa, per act, before Mazureau, notary, dated 20th February, 1851.

B. 72, fo. 37. 6th. The mortgage granted by said Mrs.
104 McGee, per act, before Mazureau, notary, dated 20th July,

1858, in favor of R. Patterson & Co., of Philadelphia, to secure $35,000, with all interest and costs.

B. I., fo. 90. 7th. The general one in favor of John Wigham, per judgment of the U. S. Circuit Court, on the 11th March, 1862, for $2,738 17-100, with interest and costs, *vs.* W. B. Partee and Thos. L. McGee, in solido.

Bk. I. M., No. 7, fo. 110. 8th. Recorded on the 4th May, 1852. The general one in favor of Henry E. Morton, resulting from a judgment rendered by the same court on the 18th April, 1852, for the sum of $1,030, with interest stipulated in said judgment, and costs of suits against the same in solido.

Bk. I. M., No. 7, fo, 129. 9th. The general one in favor of J. M. Wilson, resulting from a judgment rendered by the same court, on the 22d May, 1852, for the sum of $8,000, with interest stipulated in said judgment, and damages and costs of suit against the same in solido.

To which mortgage S. O. Nelson & Co., have been subrogated by order of said court, dated 3d April, 1858.

Bk. I. M., No. 4, fo. 638. 10th. The general one in favor of Richard E. Lawless, resulting from a judgment rendered by
105 the 4th District Court on the 27th March, 1866, for the sum of $2,565 and 36 cents, with interest stipulated in said judgment, and costs of suit against T. L. McGee.

Bk. J. M., No. 11, fo. 638. 11th. The general one in favor of Darcy & Wheeler, resulting from a judgment rendered by the 4th District Court, on the 14th March, 1866, for the sum of $225, with interest, stipulated in said judgment, and costs of suit against Thomas L. McGee.

Bk. I. M., No. 11, fo. 641. 12th. The general one in favor of Arthur Shiff, resulting from a judgment rendered by the 6th District Court, on the 27th March, 1866, for the sum of $2,500, with interest stipulated in said judgment, and costs of suit against the said Mrs. McGee.

New Orleans, June 23d, 1866.

(Signed) CHS. E. LENES,
D'y Rec'd'r.

Order continuance of cause.—From the minutes of November 30, 1866.

ROBERT PATTERSON
vs.
MEDORA A. MCGEE *et al.* } No. 3,646.

106 This cause came up for trial on the 3d opposition of Pierre Hoa. P. H. Morgan, esq., for 3d opponent; U. S. Benedict, esq., for plaintiff, when, after hearing the pleading, evidence, and counsel in part, the cause is continued till to-morrow, 1 December, 1866, at 11 a. m.

Hearing and submission of intervention and third opposition. From the minutes of Dec. 1, 1866.

R. PATTERSON
vs.
MEDORA A. MCGEE *et al.* } 3,646.

This cause was resumed. P. P. Morgan, esq., for 3d opponent. U. S. Benedict, esq., for plaintiff.

When the same was submitted on the authorities now filed.

Judgment.—From the minutes of December 7, 1866.

R. PATTERSON
vs.
MEDORA A. MCGEE. } No. 3,646.

107 For reasons orally assigned by the court, it is ordered, adjudged, and decreed that the peremptory exception filed by the plaintiff on the 23d November last, be overruled; that the intervention and third opposition of Elizabeth Emilie de La Ronde, widow and testamentary executrix of the last will of Pierre Hoa, her deceased husband, be sustained, and that there be judgment in favor of the said executrix for the sum of twenty-five thousand dollars, with eight per cent. interest per annum on $12,500, from 23d April, 1858; and on $12,500 from 29th April, 1859, till paid, and costs of intervention, with preference and privilege on the proceeds of the plantation sold in this case, on the 23d June, 1866, superior to that of all persons whatsoever, and particularly to that of R. Patterson, the plaintiff in this suit.

Rule by plaintiff.—From the minutes of December 11, 1866.

ROBERT PATTERSON
vs.
MEDORA A. MCGEE *et al.* } No. 3,646.

108 On intervention of Pierre Hoa.

On motion of W. S. Benedict, attorney for Robert R. Patterson, it is ordered that the plaintiff in rule, and defendant in exceptions, do show cause on Monday, the 24th day of December, A. D., 1865, at 11 o'clock, a. m., why a new trial should not be had in this case on the grounds now filed.

U. S. Circuit Court.

Rule and grounds, filed December 11th, 1866.

ROBERT PATTERSON
vs,
MEDORA A. MCGEE *et al.* } No. 3,646.

On intervention of Pierre Hoa.

On motion of W. S. Benedict, att'y for Robert Patterson, it is ordered that the plaintiff in rule, and defendant in exception, do show

cause on Monday, the 24th day of December, A. D., 1866, at 11 o'clock, a. m., why a new trial should not be had in this case, on the following grounds, to wit:

1st. That the judgment is clearly contrary both to the law and the evidence.

2d. That there could be no suspension of prescription between the McGees and Pierre Hoa, both being residents of the city
109 of New Orleans, and citizens of the State of Louisiana.

3rd. That the question of suspension of prescription was not raised by the pleadings, or by the argument, and there is nothing in the record to justify it.

4th. That should a new trial be granted, it can be proved that the mortgage office has never been closed since the commencement of the late rebellion, except from the 14th June, 1862, to the 26th July, of the same year, a term of one month and twenty days.

5th. That the judgment rendered herein condems your mover to suffer by the negligence and laches of Pierre Hoa.

6th. That the judgment is rendered for the full amount claimed by Hoa, when it is in evidence that he has received one thousand dollars on ac. of his claim, and has notes of a third party in his possession for the sum of $7,500, to be further paid him on account of his claim.

7th. That it is in evidence that Pierre Hoa has consented to an extension of time for the payment of his claim until the first January, 1869.

8th. That interest is allowed on the notes sued on as follows: on $12,500, from 23rd day of April, 1858, and on $12,500, from
110 the 23rd day of April, 1859, when, in fact, interest is only due on one note from the 23rd day of April, 1862, and the other note from the 23d day of April, 1862, as is evidenced by the indorsements on the said two notes.

New Orleans, Dec'r 13th, 1866.

Marshal's return.

Received December 12, 1866; and same day, month, and year served a copy of the within rule and grounds on P. H. Morgan, esq'r, attorney for def't in the within-named suit, personally in the U. S. court room in this city.

(Signed) M. EGAN,
D'y U. S. Marshal.

Order rule fixed for trial.—From the minutes of January 10th, 1867.

ROBERT PATTERSON
vs.
MEDORA A. MCGEE *et al.* } No. 3,646.

On motion of P. H. Morgan, esq'r, attorney for intervenor, ordered that the order for a new trial taken by plaintiff on the 11th Decem-

ber, 1866, be fixed for trial on Monday next, 14th instant, at
111 11 a. m., and that he be notified thereof.

Circuit Court of the United States for the 5th circuit and district of Louisiana.

Notice of trial.

ROB'T PATTERSON
vs.
MEDORA A. MCGEE *et al.* } No. 3,646.

You are hereby notified that the rule for a new trial in this case is assigned for trial for Monday, the 14th day of January, 1867, A. D., at 11 o'clock a. m.

By order of the court:

Witness my hand and seal of said court, at New Orleans, this 10th day of January, A. D. 1867.

[SEAL.] (Signed) T. B. VINOT,
D'y Clerk.

T. BENEDICT, Esq., *Atty for Pl'ff.*

Marshal's return.

Received January 11th, 1867; and on the same day served a copy of the within notice on W. S. Benedict, esq'r, the att'y named herein, personally, at his office, No. 18 Carondelet street, in this city.
112 New Orleans, January 12, 1867.
(Signed) M. EGAN,
Deputy U. S. Marshal.

Order continuance of rule.—From the minutes of January 14th, 1866.

R. PATTERSON
vs.
MEDORA A. MCGEE *et al.* } No. 3,646.

By consent of counsel, ordered that the rule for a new trial by plaintiff herein be continued till Thursday next, 17th inst, at 11 a. m.

Hearing and submission of rule.—From the minutes of January 17, 1867.

R. PATTERSON
vs.
MEDORA A. MCGEE *et al.* } No. 3,646.

The rule for a new trial taken by plaintiff herein came up, W. S. Benedict, esq'r for plaintiff in rule, P. H. Morgan, esq'r, for
113 defendant in rule; when, after hearing argument, the court took time to advise.

Order granting new trial.—From the minutes of Jan'y 29, 1867.

R. PATTERSON
vs.
MEDORA A. MCGEE *et al.* } No. 3,646.

For reasons orally assigned by the court, it is ordered that the rule taken by plaintiff on the 11th December last be made absolute, and that a new trial be granted in this case.

Order 3rd opposition fixed for trial.—From the minutes of January 30, 1867.

ROBERT PATTERSON
vs.
MEDORA A. MCGEE *et al.* } No. 3,646.

On motion of P. H. Morgan, att'y for Mrs. Widow Pierre Hoa, third opponent therein, it is ordered that this cause be assigned for trial on the said third opposition on Wednesday, 6th February next, at 11 a. m., and that the plaintiff be notified thereof.

Circuit Court of the United States for the fifth judicial circuit and district of Louisiana.

114 *Notice of trial of third opposition.*

ROB'T PATTERSON
vs.
MEDORA A. MCGEE *et al.* } No. 3,646.

You are hereby notified that the 3rd opposition of Mrs. Widow Hoa in this case is assigned for trial for Wednesday, 6th day of February, 1867, A. D. at 11 o'clock a. m.

By order of court.

Witness my hand and seal of said court, at New Orleans, this 30th day of January, A. D. 1867.

(Signed) F. B. VINOT, *D'y Cl'k.*

To W. S. BENEDICT, esq., *Att'y for Pl'ff.*

Marshal's return.

Received January 31st, 1867; and on the first day of February, 1867, served a copy of the within notice on Wm. S. Benedict, esq'r, the attorney named herein, in the hands of J. P. Hornor, esq'r, at their office, 18 Carondelet street, in his city.

N. Orleans, Feb'ry 1, 1867.

(Signed) M. EGAN,
D'y U. S. Marshal.

115 *Order trial postponed.—From the minutes of Jan'y 31st, 1867.*

R. PATTERSON
vs.
MEDORA A. MCGEE *et al.* } No. 3,646.

By consent of counsel, it is ordered that this case, fixed for trial on Wednesday next, February 6th, be continued to Friday, February 8th, 1867, at 11 o'clock a. m.

United States Circuit Court.

Consent to continue cause to February 8th, 1867.—Entered and filed January 31st, 1867.

ROBERT PATTERSON
vs.
M. A. MCGEE *and als.* } No. 3,646.

By consent of counsel, it is ordered that the case fixed for trial on Wednesday next, February 6th, be continued to Friday 8th, 1867, at 11 o'clock a. m.

116 *Motion and order for subpœna duces tecum.—From the minutes of January 3rd, 1867.*

ROBERT PATTERSON
vs.
MEDORA MCGEE *et al.* } No. 3,646.

On motion of W. S. Benedict, att'y for R. Patterson, pl'ff, ordered that the recorder of mortgages of this parish do produce in court, on the 8th February, 1867, day of trial of the cause, the books described in the statement now filed.

Circuit Court of the United States for the fifth judicial circuit and district of Louisiana.

Subpœna duces tecum.

The President of the United States to the recorder of mortgages of the parish of Orleans:

You are hereby commanded to be and appear and to bring with you the books described in the motion and statement, a copy of which accmpanies this writ and made part thereof, before the Circuit Court of the United States, for the 5th Circuit in and for the said
117 district, to be holden at the city of New Orleans. on the eighth day of February, 1867, then and there to be used as evidence in a certain cause now depending therein between Rob't Patterson, pl'ff, and Medora A. McGee et al., def'ts, at 11 o'clock, a. m., and herein fail not under the penalty of two hundred and fifty dollars.

Witness the honorable Salmon P. Chase, Chief Justice of the Su-

preme Court of the United States, at the city of New Orleans, this 31st day of January, in the year of our Lord one thousand eight hundred and sixty-seven, and in the 91st year of American independence.

[SEAL.] (Signed) CHA'S CLAIBORNE, *Clerk.*
By F. B. VINOT, *Dep. Clerk.*

Marshal's return.

NEW ORLEANS, *February 7th*, 1867.

Received February 1st, 1867; and on the 3d day of same month and year served a copy of the within order of court and snbpœna duces tecum on J. J. Burgess, recorder of mortgages, at his office, No. 18 Royal street, in this city.

(Signed) M. EGAN,
De'y U. S. Marshal.

Order of court attached.

U. S. Circuit Court.

ROBERT PATTERSON
118 *vs.*
MEDORA A. MCGEE *et al.*

On motion of W. S. Benedict, att'y for R. Patterson, and on suggesting to the court that for the trial of the issues herein presented on the intervention of Pierre Hoa, it is necessary to have in court the original books of conventional mortgages, in the office of the recorder of mortgages of this parish, showing date of inscription of mortgage of Pierre Hoa, in May, 1853; inscription of mortgage of R't Patterson, in August, 1858; re-inscription of mortgage of Pierre Hoa, in October, 1863, and book of mortgages showing at what time, and for what length of time, the mortgage office was closed since the commencement of the late rebellion, in 1861, to the present time, viz.: B. 62, fo. 237 and 238, under date 5th May, 1853; B. 72, fo. 437, under date 3rd August, 1858, and B. 79, fo. 106 and 107, under date 1st October, 1863; and book showing the period of time during which the mortgage-office was closed, as aforesaid.

It is ordered by the court that the recorder of mortgages do produce in court on the trial of this cause, on Friday, the 8th
119 day of February, 1867, the above-named and described books.

Hearing and submission of third opposition.—From the minutes of Feb'ry 8th, 1867.

ROBERT PATTERSON
vs. No. 3,646.
MEDORA A. MCGEE *et al.*

This cause came up for trial on the 3rd opposition of Mrs. widow P. Hoa, W. S. Benedict, for pl'ff, Patterson; P. H. Morgan, for third opponent; when, after hearing the pleadings, evidence and arguments, the court took time to advise, and allowed the attorneys a reasonable time to file printed briefs.

Note of evidence, filed February 8th, 1867.

ROBERT PATTERSON
vs.
MEDORA A. MCGEE *et al.* } No. 3,646.

On the trial of the third opposition of Hoa.

120 The evidence offered on the previous trial is considered on evidence at the present trial.

The books asked for by the subpœna duces tecum are brought into court and examined by counsel.

A. Ducatel, jr., and I. W. Maddens sworn for plaintiff.

Receipt for $2,500, filed Feb'y 11th, 1867.

Receipt of Sambola & Ducros, filed February 11th, 1867.

NEW ORLEANS, *February 9th*, 1867.

We hereby certify that we have received, on the 16th of January, 1867, from Mr. P. Drennen payment of his note of two thousand five hundred dollars given to the late Pierre Hoa, in pursuance of agreement signed by the said Pierre Hoa, the said B. P. Drennen, and Mrs. McGee, on the 12th of April, 1866.

(Signed) SAMBOLA & DUCROS.

On introduction of Pierre Hoa.

121 *Brief of Robert Patterson, filed February 15th, 1867.*

ROBERT PATTERSON
vs.
MEDORA A. MCGEE and husband. } No. 3,646.

Brief of Robert Patterson.

UNITED STATES CIRCUIT COURT, *District of Louisiana*:

This is a contest between two mortgage creditors of the defendants', relative to the rank and privilege of their respective mortgages on a certain plantation, known as the "Aurora," situate in this parish, on the right bank of the Mississippi river.

On the 23d of April, 1853, Pierre Hoa sold the said plantation to the defendants for the sum of $95,000, in part payment of which they gave several promissory notes, which were secured by special mortgage on the property sold. This act of mortgage was duly recorded in the mortgage office of this parish on the 5th May, 1853.

On the 20th July, 1858, by act before A. Mazureau, notary public in this city, the said purchasers, Medora A. McGee and her
122 husband, being indebted unto Robert Patterson, of Philadelphia, in a large sum of money, granted him for the security of same, a mortgage on the said plantation. This act of mortgage was recorded in the mortgage office on the 3d day of August, 1858.

In October, 1865, Robert Patterson instituted suit on his mortgage

notes, and in due time recovered judgment for $35,000, interests and costs. He issued execution on the judgment in March, 1866, and purchased the plantation for his own account.

On the 26th of June, 1866, Pierre Hoa intervened in the suit, and claimed of Robert Patterson, in cash, the sum of $25,000, being the amount of the last two notes given him by Mr. and Mrs. McGee in 1853. These notes became due on 23rd April, 1858, and 1859, and the judgment of same was extended from year to year, interest being paid to 23rd April, 1863. To this intervention Patterson filed an answer, setting forth the following facts in defence, viz.:

That on 12th April, 1866, while the execution of Robert Patterson was pending on said plantation, Pierre Hoa had entered into an agreement, in writing, with the McGees, and with a certain Benjamin P. Drennan, in which agreement Mrs. McGee acknowledged
123 herself indebted to Hoa, as above claimed by him, and bound herself to let judgment go by default in his favor, in a suit before the Sixth District Court of New Orleans, instituted by him. It was agreed by Hoa, for the consideration of $1,000, cash, which he then received, and a note of Drennan's for $2,500, which he has since received, on 16th January, 1867, that he, Hoa, would not issue execution on the judgment which he was to obtain until the first January, 1867, and in case the note of Drennan's was paid him on that day; and for a further consideration of $2,500, to be also paid him at same time, he would delay the issuance of execution until 1st January, 1868; and in consideration of a further sum of $2,500, to be paid him on 1st Jan'y, 1868, he would not execute his judgment until first January, 1869.

Patterson further answered by stating that said agreement was entered into by the parties without his knowledge or consent, and that no knowledge of the same was conveyed to him until a few days before the sale of the property under his (Patterson's) judgment, in June, 1866, when he found the place under the control of Drennan, in accordance with the agreement above set forth, said Drennan claiming a lease on same until 1st January, 1869.

Patterson, further answering, said the acts and doings of Hoa
124 had caused him great injury; that the value of the plantation had greatly diminished, and that he was compelled to purchase the place to save himself, as the McGees had no other property, and had left the country permanently. For these and other reasons set forth in the answer, Patterson prayed the court to reject the intervention of Hoa, and to decree that respondent be decreed to have a privilege and mortgage on the proceeds of sale superior to that of Hoa.

On the 30th day of November, 1866, Patterson filed a peremptory exception to the intervention of Hoa, setting forth the fact that the mortgage and privilege claimed by Hoa had been lost by reasons of the non-reinscription of his mortgage act in the office of the recorder of mortgages within ten years from the day of its execution; and that, by reason thereof, his mortgage and privilege had lost their rank, and he was only entitled to be paid after Robert Patterson. On these pleadings the case is at issue.

The books of the recorder of mortgages being called for, under a subpœna duces tecum, were produced in court, and were found to contain the inscriptions of the mortgages, as follows:

125 McGees to Hoa, inscribed in B. 62, folio 237 and 238, May 5th, 1853.

McGees to Patterson, inscribed in B. 72, folio 37, August 3rd, 1858.

McGees to Hoa, re-inscribed in B. 79, folio 106 and 107, October 1st, 1863.

Thus showing Hoa's mortgage to have been re-inscribed four months and twenty-five days after the expiration of the ten years from its original inscription.

Hoa prays for a first mortgage and privilege, which we contend he has lost by reason of the non-reinscription of his act within ten years from its first inscription, as is required by article 3,333 of the Louisiana code—

"The registry preserves the evidence of mortgages and privileges during ten years, reckoning from the day of their date; their effect ceases, even against the contracting parties, if the inscriptions have not been renewed before the expiration of his time, in the manner in which they were first made."

As your honors will observe, it is the mortgage and privilege which are lost, by reason of such non-reinscription, not their effect. Such omission causing the same to lose their rank, and giving it new
126 effect on from the time of such re-inscription. Bouin *vs.* Durand, 2d annual, p. 778, Art. 3,317 of the code, makes it necessary that all mortgages, whether conventional, legal, or judicial, should be recorded, mortgages to which husbands, tutors, and curators are subjected by law, being alone excepted from this rule.

Roche's heirs *vs.* Groysilliere, 13 La., p. 246. No point has been more fully decided in every possible form by the Supreme Court of Louisiana than that a mortgage inscribed more than ten years without re-inscription, loses its effect between the parties and third persons.

(See 13 La., 245; 14 La., 103; 6 Rob., 166, 419; 11 La., 66.)

The same questions presented in the above decisions, were reopened fully and elaborately, discussed by the leading counsel of the State in 1847, in the case of Shepherd *vs.* The Orleans Cotton Press Company, 2d annual, pages 100—113, and re-affirmed by that court in their decision, which opinion has since been affirmed in the cases reported in 2 A. 768, 779; 4 A. 396; 7 A. 344; 11 A. 390; 12 A. 216; 13 A. 569.

The point raised by Hoa in this case is based upon articles
127 3,314, 3,315 and 3,316 of the civil code, viz: That mortgages are only allowed to prejudice third persons when they have been publicly inscribed on records kept for that purpose. By the words third persons, are to be understood all persons who are not parties to the act, and who have dealt with the debtor either in ignorance or before the existence of this right; and that neither the

contracting parties, nor their heirs, nor those who were witnesses to the act by which the mortgages were stipulated, can take advantage of the "non-inscription" of the mortgage.

He contends that in the mortgage act of Patterson his previous mortgage was alluded to, and that in consequence thereof, Patterson had notice of the same, and did not deal with his debtor in ignorance of Hoa's rights on the property.

This is true. Patterson knew that such a mortgage existed on the property; that the same was represented by promissory notes; that the last note became due in April, 1859, and that by a special clause in the act of sale by Hoa to the McGees, there would be no extension of the time for the payment of said notes. He also knew, that Hoa's mortgage was granted in April, 1853; that the same would lose its rank if not re-inscribed within ten years from that
128 date; and lastly, he knew, when he instituted his suit in 1865, that Hoa's privilege and mortgage were lost by reason of such non-reinscription. All these facts were within his knowledge, being patent upon the record.

But the question arises, what effect had such notice on Patterson's rights? Is notice of the existance of a mortgage equivalent to registry?

Pierre Hoa and Robert Patterson are both creditors of the McGees.

Article 3,297, C. C., says that among creditors the mortgage has force only from the time of recording it in the manner hereinafter described. Then follows the exceptions in favor of minors, etc.

Here the case does not fall within article 3,316, as the act of Hoa was inscribed in 1853, but it falls within art. 3,333, as the mortgage was not re-inscribed with the period fixed by law. Both parties, by the registry of their mortgages, affected all the world with notice of their existance, and thus precluded all questions that otherwise might have arisen under the state of things contemplated by Arts. 3,214, 3,216.

The cases cited by Hoa in argument are those in which the registry of the mortgages has been omitted, and the rights claimed
129 by subsequent mortgages are contested on the ground that at the time of becoming such they were aware of the existance of the prior mortgage. The record calls for no decision upon such a state of facts. The important distinction between the cases consists in the fact that the mortgages in question were duly inscribed, and that being the case, the only question for decision is, what alteration, if any, took place as to the rights of the parties by the failure of one of them to renew such registry within ten years. To meet this view of the case, he is bound to show that he is in the same condition he would have been in, had he omitted to inscribe his mortgage.

To prove this, he must show that the registry of a mortgage produces no legal effects. This he cannot do. On the contrary, it is an undisputed principle of law, that the legal effect resulting from registry, is to visit with notice as effectually as if all the world had witnessed the contract. C. C., Art. 2,264. The inscription gave

rights to the mortgage, which he had not without it. It placed all others under restrictions which did not exist without it. Registry alone gives effect to a mortgage, C. C., Art. 3,317, 3,318, 3,290; 8 N. S. 570; 9 La. 354. It has effect against third persons
130 only from the day it is thus registered. C. C., Arts. 3,317, 3,318, 3,319. And to have effect after ten years, it must be re-inscribed in the same manner. Art. 3,333.

Legislative action has been governed by the uniform judicial decision upon Art. 3,333 of the code. In 1842 the legislature, by express law, exempted the property of Banks from the effect of that article; and in 1842 authorised any person interested to cause to be cancelled mortgages more than ten years old. The only possible reason was, that they were extinct by the operations of law. Otherwise, the legislature would not have authorised any one to injure a mortgage by cancelling his existing mortgage, not only for his own benefit, but as to all other persons.

Acts of 1842, p. 232. Acts of 1843, p. 51.

But articles 3,314 and 3,315, are not inconsistent with 3,333, as interpreted by us. They relate to inscription, and not re-inscription. They protect the negligent from those who seek to take advantage of their knowledge of that negligence, not those who in their fair business oppose and extinguished mortgage. Hoa, by inscribing his mortgage, shut out all questions that otherwise might have
131 arisen under articles 3,314 and 3,315. That by so doing, he has brought himself within the very letter of Art. 3,333, according to his own interpretation of it, and that the legal consequence resulting from the failure to re-inscribe must have effect.

Judge Rost, in the case of Stephens *vs.* Orleans Cotton Press Company, 2 An., p. 110, says of the inscription of the mortgage: "It must be renewed at certain fixed periods, and the non-reinscription may be opposed by all third persons having an adverse interest, although they may be charged with notice. The right of preference which subsequent mortgage creditors, with or without notice, are compelled by law to give to the inscribed mortgage, provided it is re-inscribed according to law, appears to be viewed in the light of an obligation contracted on condition that an event shall happen within a limited time. C. C., art. 2,033. The delay is in all cases fatal, and if it is suffered to expire without re-inscription, the mortgage loses its rank, and a subsequent re-inscription gives it effect only from the time it is made."

Art. 2,154 of the code Napoleon is the same as our Art. 3,333.

3. Troplong sur privileges et hypothiques, page 163, says:
132 "L'inscrption ne conserve l'hypothique ou le privilege que pendant dix ans, a compter du jour de sa date. A l'expiration de ces dix ans, il est necessaire de la renouveler, sans quoi l'hypothique perd sou rang, de meme que si elle u'avait jamais ete inscrite. Mais si l'inscription est renouvellie en temps utile, l'hypothique, continue a conserver sou rang a la date de l'inscription primitive."

Judge Rost further says, that we have adopted the French law, in a manner too clear to be misunderstood; that whenever the inscrip-

tion has been made, the provisions of art. 3,333 cannot be evaded, and in passing upon the same question which has been raised in this case, he rehearsed all the laws relative to mortgages, since the adoption of the code of 1808, and concludes, as follows:

"The inscription is exclusively in the power of the party having an interest to make it. If he does not re-inscribe, he cannot complain of losses sustained through his own neglect. The construction, contended for by appellants, would make, in all cases, of the effect of inscription, a matter cus pais, and therefore uncertain, and would give rise to endless litigations.—(See 2 An, pp 111 and 112.)

The court says, in 6 Rob. p. 170, the provisions of arts. 3,314 and 3,316 are not irreconcilable with art. 3,333. The intention
133 of the law-maker was, that a mortgage, whether inscribed or not, shall cease to have its legal effect after ten years, to be reckoned, when not inscribed, as to the parties, from its date, and as to third persons from the time of its inscription, unless renewed before the expiration of that term, that though the mortgage to have effect between the parties, need not be recorded during the first ten years from its date, yet to continue in effect afterwards, it must have been inscribed as directed by art. 3,333, before the expiration of that period; and that this inscription may be considered as a renewal of the mortgage between the parties, and against third persons.

And, in the case of Lejeure *vs.* Hebert, same vol., p. 421, it was held that "neither the parties, nor their heirs, nor the witnesses to the act, by which a mortgage is stipulated, can take advantage of its non-inscription, during the first ten years from its date, (C. C, 3,316,) but it will cease to have effect, even as to them, after that period, if not inscribed before its expiration.—(C. C. 3,333."

Hoa also contends that being a vendor, his privilege is not lost with his mortgage.

We cannot see by what course of reasoning he comes to this conclusion. The code directs, in art. 3,238, that "the vendor
134 of an immoveable only preserves his privilege by having it duly recorded," and in art. 3,332, "that the inscription of acts, on which privileges are founded, shall be made in the same manner as mortgages," and by art. 3,333, "the registry preserves the evidence of mortgages and privileges during ten years; their effect ceases after that time," etc.

Morrison *vs.* Trudeau, D. N. S., 384.
Ells *et al. vs.* Sims *et al.*, 2 An., 254.
Perot *vs.* Chambers, 2 An. 801.
White *vs.* Union Bank, 6 An. 162.
Privileges become extinct by prescription, art. 3,244.
Barelli *vs.* Delassus, 16 An. p. 283.
The rank of vendor's privilege is lost for want of re-inscription within ten years.
Deneufbourg *vs.* Dedier, Romer, *et al.*, 7 An., page 344.
We now propose to examine the authorities quoted by intervenor:
2 Au. p. 846. "Actual knowledge, by a purchaser, of an existing

mortgage or tittle, is equivalent to a notice, resulting from a registry of the mortgage or title."

That doctrine is not questioned. Hoa's mortgage has lost its rank by reason of non-re-inscription.

135 6 N. S. p. 713, reports a case, where the act had never been inscribed.

7 N. S. 385, 8 N. S. 144; 6 Rob. 88, and 7 Rob. 44, refer to consequences of sales of property subject to mortgages, which were not registered.

3 An. p. 600 says: The privilege of the vendor exists by force of law, and is not required to be expressly stipulated.

In no one of the above cases, relied on by Hoa, did the question now before the court arise. Sales of property are made by sheriffs and marshals, subject to existing laws, and these compel them, at every sale of an immovable, to read a certificate of mortgages registered against the property, and to make the sale subject to such mortgages. The amount and validity of such mortgages are afterwards determined by the court under whose order the property was sold, if any such questions arise between the mortgage creditors and the purchaser. In this case, both parties are mortgage creditors, and each contest the right of the other.

It has been asked what effect the late rebellion had on the question at issue? Was either party unable to act by reason thereof? Could Hoa have maintained an action upon his mortgage before

136 the city was re-occupied by the United States authorities? We answer that he could; that the State court, were at all times open for litigation; that he, as well as his debtors, the McGees, were residents of this parish; and that he could have re-inscribed his mortgage act before the expiration of the ten years. in the proper office of mortgages of their parish.

We conclude by saying that a mortgage not inscribed when given, is good as to parties, their heirs and the witnesses to the same, for ten years after its date; but to have effect as to third persons, it must be inscribed when given. And it has no effect whatever as to any one, if not re-inscribed within that period. A mortgage lives but ten years, and to extend its existence, it must be re-inscribed before that time expires, and it then lives ten years longer.

The purchaser, Robert Patterson, respectfully prays that his exceptions be maintained, and that he be decreed to have a mortgage superior in rank to that of the intervenor, Hoa.

Respectfully submitted,

HORNOR & BENEDICT,
Attorneys for Patterson.

New Orleans, February 9th, 1867.

137 United States Circuit Court.

Brief of Mrs. Hoa, filed March 1st, 1867.

ROBERT PATTERSON
versus.
MEDORA MCGEE.

On the intervention and third opposition of Pierre Hoa, brief on behalf of Hoa.

The facts of this case are few:

Pierre Hoa sold to Mrs. McGee a plantation and slaves; a portion of the price was to be paid several years after the date of sale.

The act of sale was duly enregistered. In the act the vendor's privilege was specially reserved.

Before the term of payment had arrived, Mrs. McGee mortgaged the same property to Robert Patterson. In the act of mortgage from McGee to Patterson, Hoa's privilege is particularly set forth. This mortgage was recorded in proper time and place.

Patterson prosecuted his hypothecary action against the
138 property of his debtor. Judgment was rendered in his favor; the plantation was sold, subject to Hoa's mortgage for cash, and Patterson became the purchaser.

In the act of sale he binds himself to pay the debt due to Hoa.

Hoa has taken this rule upon him to show cause why he should not comply with the terms of the adjudication, and pay the vendor's privilege, which he holds against the property sold, which he assumed to pay.

He answers that Hoa's privilege is prescribed.

It is admitted that Hoa's sale to Mrs. McGee was not re-inscribed within ten years after it was first put upon the books of the recorder, by Hoa.

The questions propounded for the solution of the court are:

1st. Has not a vendor, who has sold on credit, and who has had his sale recorded, a privilege upon the property sold, to secure the payment of the price, until the term of payment has arrived, and from that time until the same has been paid, in accordance with the contract, or until the obligation has been prescribed?

2d. Whether actual knowledge of an existing vendor's
139 privilege or mortgage, is equivalent to a notice from its registry, and herein, what is sufficient notice.

And 3rd. Whether, having assumed to pay Hoa's mortgage, when he purchased, this does not constitute a part of the price.

1st. By the laws of Louisiana, the vender has a privilege upon the property sold, until the purchase price has been paid.—(C. C. 3,216.)

There is no limit to the time in which payment may be stipulated. No doubt, the debt may be paid by the lapse of time, but so long as the debt is exigible, the privilege lasts. Prescription only commences to run after the debt has become due, and Hoa's debt is not prescribed. All that is required to preserve the privilege. So far as third parties are concerned, is that the act of sale be recorded.

Registry of sale is sufficient notice to the world, of the existance of the privilege; it warns every one of the rights of the vendor, and no one can trade with the vendee, so far as the property sold is concerned, without knowledge of the rights existing upon the property sold. Hence if a piece of property be sold on a credit of fifteen years prescription would not begin to run until the fifteen years had elapsed; otherwise the vendor who had sold his property on the terms of credit above-mentioned, (which no law prevents him from doing,) would find that his privilege had been destroyed before his
140 right of action had accrued.

The vendor's privilege is the highest privilege arising out of the contracts entered into between man and man.

It is a right which the nature of the debt gives to a creditor, and which entitles him to be preferred before other creditors, even those who have mortgages.—C. C., 3,153, 3,216.

This is the language of the law, and it is submitted that Patterson cannot change the reading of the code, and make his mortgage superior to the vendor's privilege.

The vendor's privilege exists although the mortgage is released.—Citizen's Bank *vs.* Curry, 12, R. 379.

It exists upon the whole property sold, even if special mortgage is reserved on only a portion thereof.—Bachus *vs.* Moreau, 4 A. 313.

It exists where no mortgage has been reserved. It results from the law, and it lasts until the price is paid.—Boner *vs.* Marble, 3 A. 600.

In the Citizens' Bank case, Baily sold to Curry a tract of land, for which Curry executed his three promissory notes; and
141 to secure their payment, reserved a mortgage in his favor upon the property sold. The act of sale was recorded, and on same day Bailey, the vendor, caused to be written, on the books of the recorder of mortgages, the following declaration: "The mortgage herein contained is hereby fully released and discharged, without, however, acknowledging the payment of the price of the purchase money."

The bank became the owners of two of Curry's notes thus given, and instituted suit upon them. The District Court decided that the release of the mortgage, by the vendor, carried with it the extinguishment of the vendor's privilege, and only gave an ordinary judgment against the maker of the note.

The Supreme Court, on appeal, said, "there is undoubtedly a difference between a special mortgage reserved to secure the payment of the price of the thing sold, and the vendor's privilege. The vendor's privilege gives to the vendor, in addition to the right to have the property sold to pay the price, a rank in relation to other creditors of the vendor, which he might not otherwise have. It confers upon the vendor a right to the recission of the sale on the non-payment of the price; and Bailey, by transferring the notes,
142 parted with these accessory rights, which vested in the plaintiffs as the holders of them. Under these circumstances, we are of opinion, that none of the parties have a right to gainsay

the existance of the vendor's privilege, as it results from the tenor of the deed, independently of the special mortgage therein reserved," and the judgment of the District Court was reversed.

Thus it will be seen, that although the vendor released his mortgage, the vendor's privilege was declared to be in full force.

In Bacchus's case the court say, "the principal question in this case is, whether in the act of sale by Bacchus to Moreau, the former is to be considered as having relinquished the vendor's privilege. The sale was of a tract of land containing one arpent and three-quarters, front, by forty in depth."

The description of the note is followed by a clause in these words: "Et pour assurer le paiement du dit billet a son echeauce, ainsi que de tous frais et interets, hypotheque speciale est reserve seulement sur trois quarts d'arpent du cote d'eu haut de la dite propriete; l'acquereur prometant et s'obligeant de ne les point aliener ou hypothequer au prejudice des presentes."

"The appellee must concede that, if the act had con-
143 tained no stipulation of mortgage, the vendor's privilege, which results by operation of law, from the nature of the contract, and needs no express stipulation of the parties (C. C. 3,153, 3,216,) would have extended to the entire tract." "The mortgage and the privilege are distinct rights; they may co-exist; the one does not exclude the other, and the enforcement of the mortgage did not conflict with the privilege which still subsisted upon the residue of the property sold."

In this case there was no mortgage on the property. It was not necessary that there should have been. The vendor was protected by his privilege.

In Boner's case it was said, "by article 3,216 of our code, the vendor has a privilege on the estate or slave sold by him for the payment of the price, or so much of it as is due, whether it was sold on or without a credit. It is not necessary that, in the contract of the parties, this privilege should be expressly stipulated. It is a right which springs from the nature of the debt, and by force of law is embodied in the contract, unless it be renounced.

It is also a right of a very high character, conferring advanta-
ges superior to those which flow from a mortgage. It is not
144 necessary that this right should be renounced in express terms in the act of sale. Such renunciation may be implied from the terms of the instrument; but inasumuch as the obligation of contracts extends not only to what is expressly stipulated, but also to every thing that by law is considered as appertaining to the nature of the particular contract; (Code 1,897;) and inasmuch as the vendor privilege is a legal concomitant of the contract of sale, it must be held, upon sound principles of interpretation, that the renunciation of this important right, which sets aside the legal presumption, should be established, not by doubtful, but by clear and cogent influences from the language of the parties.

Now, the ommission of the parties to stipulate a special mortgage cannot be considered as an implied renunciation of the higher right

of privilege. Such a construction would militate against the express provisions of our law, which declares privileges to be given by the nature of the debt, and confer a privilege upon the vendor by force of the contract of sale itself. It has even been held that, when a special mortgage had been taken, its subsequent release did
145 not affect the vendor's privilege. Citizen's Bank *vs.* Levy, 12 R. 79. See also Successions of Johnson, 3 R. 217; Howard *vs.* Thomas, 3 La. 112. Privilege and mortgage may co-exist, and the former may exist without the latter. "The rights are different."

The doctrine that the vendor's privilege remains after the vendor's mortgage has been destroyed or has never existed, has been settled by the decision of the Supreme Court of the State.

In Curry's case it was stated by the court, that the vendor's privilege conferred upon the vendor a right to the rescision of the sale, on the non-payment of the price; and the vendor's right thus announced, was expressly decided in the case of Johnson *vs.* Bloodworth, 12 A., 699. The question presented in the case cited was, whether the vendor of a slave, who has not recorded either in the notarial or mortgage records of the mortgage office the act of sale executed by him under private signature, can maintain an action to dissolve the sale, as against mortgage creditors, who have, in good faith, had their mortgage recorded in the proper office against the vendee? and the question was answered in the affirmative.

146 Under the decisions, Hoa's privilege would have existed, even if his act of sale had never been recorded. Surely, then, he has not lost it, because he did record it. If the privilege exists, it must now be satisfied.

2d., As to notice: One knowing that of which it is the purpose of the law to notify him, by registry of an act, is as much bound by his personal knowledge as if derived from an inspection of the record.

Planters' Bank of Geogia *vs.* Allard, 8 N. S. 136.

Bill *vs.* Haw, et al., Ib. 243.

Rachal *vs.* Normand, 6. R. 88.

Robinett *vs.* Compton, 2 A., 846.

In the Planters' Bank case, the court say: "We take it now to be a settled rule, that the actual knowledge of a purchaser of an existing mortgage is equivalent to the notice resulting from the registry; consequently, that the absence of the record of a mortgage is no evidence of the mortgagee's intention not to rely thereon."

In Bill's case, the same court held that "notice to a third party who purchased at a sale of prior tittle is sufficient to hold the property, although the tittle may not be regularly recorded, if such notice be given at or before the sale."

147 In Rachal's case it is said: The sole question which the case presents for our solution, is whether the plaintiff can exercise his privilege of vendor when he has neglected to register the sale, on making proof of the knowledge of Lacour, at the time he made the purchase from the plaintiff's vendee; that the latter still owed part of the price of the slave to the plaintiff.

The knowledge of Lacour, at the time he purchased the slave, that part of the price was not then payable, is established

In the case of the Planters' Bank of Georgia, *vs.* Allurd, 8 N. S. 136, "the only question which this case presents was determined in favor of the vendor. We there expressed our opinion that a purchaser, with a knowledge of an existing mortgage, cannot avail himself of the want of registry. It is true, that was a case of mortgage, and the one now before us is that of a privilege. Both mortgages and privileges have the same effect, to wit: that of enabling the creditor to demand the sale, for the payment of his debt, of property in the possession of another."

In Robinet *vs.* Compton, it was said, (p. 854): "The doctrine
148 is now well settled that the actual knowledge by a purchaser of an existing mortgage or tittle is equivalent to a notice resulting from the registry. The formality of recording is for the benefit of the public and for the purpose of giving notice to individuals. But if a party have knowledge of that, of which it is the purpose of law to notify him, by causing an act, instrument, or lien, to be recorded, the effect is the same, and he is as much bound by his personal knowledge as if information was derived from an inspection of the record."

In the case of Swan *vs.* Moore, 14 An., p. 833, it was decided that creditors are much bound by the actual knowledge of a prior unrecorded title as subsequent purchasers are, the law having made no distinction between them as to the effect of notice or knowledge derived from the registry of an act of sale or mortgage; that actual knowledge of an unrecorded title on the part of a creditor, is equivalent to knowledge or notice resulting from the registry of such a title, and that the party charged with this knowledge cannot get rid of such notice by saying he had heard such was the fact but did not believe it.

149 Under these decisions, if Hoa's title had never been recorded, Patterson, who had notice, would have been bound. Surely, when it was not only recorded, but had been examined by him, and specially mentioned in an act which he put upon record, he cannot now be permitted to say that he was not bound by it. Indeed he made himself a party to it, and it is well settled that parties to a contract cannot urge its non-inscription. The objection can avail only third persons.

Duncan *vs.* Elam, 1 R. p. 135.
Saunders *vs.* Dosson, 3 A. p. 587.
Haines *vs'* Verrel, 11 A., p. 122.
Thompson *vs.* Parent, 12 A., p. 183.

If the doctrine enunciated by so many decisions of the Supreme Court of the State of Louisiana, that notice is equivalent to registry be correct, then the question arises as to whether or no Patterson had notice of Hoa's privilege. This question is answered by Patterson's mortgage, in which the privilege of Hoa's is expressly mentioned.

It was only brought home to him, but he made it a part of his act of mortgage.

It is true that by the article 3,315, C. C., mortgages are

150 only allowed to prejudice third persons where they have been publicly inscribed on the records kept for that purpose ; but it is also true, in the express language of the code, that by word, third persons, used in the foregoing article, are to be understood all persons who are not parties to the act, or the judgment on which the mortgage is founded, and who have dealt with the debtor, either in ignorance, or before the existance of this right.—C. C., 3,315.

Patterson cannot say that he dealt with his debtor in ignorance of Hoa's right, because it was placed before his eyes when he took his mortgage. He was, consequently, not prejudiced thereby, and inscriptions, as to him, was not necessary. Taking another step forward in this matter of registry and notice, it is submitted that, if registry, and re-registry were necessary, which has been, and will be further shown it was not, the notice of privilege was substantially and sufficiently made. It was made by Patterson himself. His act contains a recital of Hoa's privilege, and when he caused his mortgage to be inscribed, he thereby re-inscribed Hoa's privilege.

In the case of Sauvinet *vs.* Landreaux, I. L. 219, 221, the
151 court say : "Any act inscribed in the recorder's office, which conveys to third persons the knowledge of a mortgage, fulfils the object of the law, which is to give notice to the world of the incumbrances upon immovables, and to afford means of information to all interested in making the inquiry."

Any person examining the records of the mortgage office, would have seen that Hoa's privilege was specially mentioned in Patterson's mortgage, and if it was brought to his knowledge it would have been sufficient. Patterson knew it, for he had it inscribed. He cannot escape from the consequences of his own act. Proceeding still further in the examination of the question as to the sufficiency and necessity of registry in matters of privilege, let us see what the French commentators say upon the subject. The article 3,333 of our code corresponds exactly with article 2,154 of the code Napoleon.

Commenting upon this latter article, Marcade uses the following language :

Concluons donc, que le vendeur, creancier privilege conserve son droit de preference vis-a-vis des creanciers inscrits du chef de l'aquereur, par le seul transcription, et sans le secours d'aucune inscription ; que des lors il ne saurait etre question ici de
152 renouvellement deceimal, et que, le contract de vente une fois transcrite, le privilege du vendeur subsiste vis-a-vis de ces creanciers et se maintient, sauf les causes d'extinction enumerees dans l'article 2,180, et au nombre desquelles ne se trouve pas le defaut de renouvellement.

Marcade, 1 e. partie.

"Entre les creanciers, les privileges, ne produisent d'effect a l'egard des immeubles qu'autant qu'ils sont rendus public par inscription sur les registres du conservateur des hypotheques de la maniere determinee par la loi, et a compter de la date de cette inscription sous les seules exceptions qui suivent. C. N., 2,106.

"Mais en ce qui concerne l'inscription que le conservateur doit aux

termes de l'art. 2,108, faire d'office sur son registre et de la creance resultant, tant en faveur du vendeur qu'en faveur du preteur, de l'acte translatif de propriete, la difficulte a ete et reste encore des plus serieuses. Nous l' avons discutee plus haut (No. 274 loco cit.) et nous avons demontre, que si l'avis precite du conseil d'etat declare que cette inscription doit aussi etre renouvelee avant l'expiration du delai de dix ans, son object principal en ce point, et
153 peut etre son object unique, a ete de faire cesser le doute qui s'etait eleve sur la question de savoir si le renouvellement devait etre fait, comme l'inscription elle meme, par le conservateur sans requisition du vendeur, mais que l'avis du counseil d'etat n'a pas fait de cette inscription, et de son renouvellement une condition necessaire a la conservation du privilege parceque en cela il aurait change du tout au tout la partie de la loi d'apres laquelle l'inscription prise d'office par le conservateur est une formalite absolument etrangere au vendeur dont le privilege est conserve, avec ou sans elle, par le seul effect de la transcription du contract de vente.''—Marcade, Art. 2,154, zieme partie, p. 974, No. 1,049.

"Le privilege du vendeur se conserve par le seul effect de la transcription. L'inscription d'office a pour objet d'averter les tiers. Le defaut de renouvellement de cette inscription est donc sans influence sur le sort de ce privilege.''

Boileaux 7, p. 514, on Art 2,154. C. N. Favard, Priv. Sec. 4, No. 6, Troplong, N. 286. Duranton, p. 171.

"Il faut distinguer entre le rang et l'effect du privilege ; le vendeur doit prendre inscription pour donner effect a son privi-
154 lege et le mettre en action, mais comme ce droit tient son rang de la qualite de la creance, l'effect du privilege remonte au jourme me du contract de vente, a quelque epoque que l'inscription soit prise ; par consequent, il un' y a point a distinguer si l'inscription du privilege est plus recente ou plus ancienne que celles des hypotheques crees par l'acquereur; dans un ou l'autre cas, sa nature lui assigne un rang ; ce rang est completement indifferent de l'inscription.''

Boileau, 7. p. 275, on art. 2,108, C. N. It is submitted that the authorities on this point are conclusive.

If it be true that in the case of Shepperd *vs.* The Cotton Press, it was decided, that as between mortgagees with notice, mortgages lose their rank from not being re-inscribed within ten years, it is submitted:

1st. That this doctrine is entirely opposed by the various decisions herein quoted; and,

2d. That the question here is not as it was in that case between mortgagees, but that it is a question of vendor's privilege, which has never been denied by the courts of this State, and which is sanctioned, nay, commanded, by the highest authorities of France.

155 3rd. Patterson at the sale, and in the act thereof, assumed to pay his debt. It was a portion of his contract and he must comply with it.

In the case of Parker *vs.* Walden, 6, N. S., p. 713, it was decided that "where the contract states a privilege existing on the thing sold, and the vendee discharges the vendor from the consequences, he cannot resist the privilege on the ground that the act from which it results was not duly registered."

In the case of Noble *vs.* Cooper, 7 R., p. 44, it was held that the omission to register a mortgage cannot be taken advantage of by a purchaser of the mortgaged property, who assumed the payment of the debt secured by mortgage, as part of the price.

The decree perpetuating the injunction only sustained the exception of want of registry, which cannot be pleaded in this action, the defendant having assumed to pay the debt for which he is sued; and having therefore full knowledge of the mortgage by which it was secured.

It is therefore respectfully submitted, that there should be judgment in favor of Hoa for twenty-five thousand dollars, with interest thereon at the rate of eight per centum per annum, from the
156 23d of April, 1862, until paid, subject to a deduction of $1,000, and another of $2,500.

P. H. MORGAN,
Of Counsel for Hoa.

Circuit Court of the United States, fifth circuit and district of Louisiana, April term, 1867.

Judgment.

NEW ORLEANS, *Monday, May 13th*, 1867.

Court met pursuant to adjournment.
Present, Hon. E. H. Durell, district judge.
Absent, Hon. J. M. Wayne, presiding judge.

ROBERT PATTERSON
vs.
MEDORA A. MCGEE, *et al.* } No. 3,646.

For reasons orally assigned by the court, it is ordered, adjudged, and decreed that the peremptory exception, filed by the plaintiff on the 23rd November last, be overruled; that the intervention and 3rd opposition of Elizabeth Emilie de la Ronde, widow and testamentary executrix of the last will of Pierre Hoa, her deceased husband, be sustained, and that there be judgment in favor of the said
157 executrix, for the sum of twenty-five thousand dollars, with 8 p. c. interest per annum on $12,500, from 23d of April, 1858, and on $12,500 from 29th April, 1859, till paid, and costs of intervention, with preference and privilege on the proceeds of the plantation sold in this case on the 23rd June, 1866, superior to that of all persons whatsoever, and particularly to that of R. Patterson, the plaintiff in this case.

Judgment rendered May 13th, 1867.

Remittitur.

NEW ORLEANS, *Tuesday, May* 14, 1867.

Court met pursuant to adjournment.
Present, Hon. E. H. Durell, district judge.
Absent, Hon. J. M. Wayne, presiding judge.

R. PATTERSON
vs.
M. A. MCGEE, *et als.* } No. 3,646.

On motion of P. H. Morgan, of counsel for Emilie de la Ronde, executrix of the last will and testament of Pierre Hoa, intervenor herein, it is ordered that he have leave to enter a remittitur for the sum of three thousand five hundred dollars, and of all interest up to the 23rd April, 1862, on the judgment herein rendered in favor of the said executrix, on the 13th of May, 1867.

158

Judgment signed May 18, 1867.

(Signed) E. H. DURELL, *Judge.*

In the United States Circuit Court, fifth circuit and district of Louisiana.

Petition for writ of error.—Filed May 23rd, 1867.

To the honorable judges of said court, the petition of Robert Patterson, a citizen of the State of Pennsylvania, residing in the city of Philadelphia, in said State, respectfully represents:

That he is informed and verily believes there is error to his prejudice in the final judgment rendered on the 13th day of May, 1867, in a certain cause herein depending, wherein Robert Patterson is plaintiff, and Thomas L. McGee, and his wife Medora A. McGee, are defendants, and Pierre Hoa, deceased, represented by his testamentary executrix Elizabeth Emilie de la Ronde, is third opponent and intervenor, rendered in favor of said intervenor, and against your petitioner, said suit being No. 3,646 of the docket of said court. That he feels aggrieved by said final judgment and desires to sue out a writ of error returnable in the Supreme Court of the United States according to law.

159

Wherefore your petitioner prays that a writ of error may be allowed him herein the same to operate as a supersedeas, returnable to the Supreme Court of the United States, on the first Monday of December next, on his giving bond and surety as the law directs.

And he will ever pray, &c.

(Signed) HORNOR & BENEDICT,
Att'ys for Petitioner.

Order.

A writ of error to operate as a supersedeas is allowed in this case as prayed for and according to law returnable to the Supreme Court of the United States, on the first Monday in December next, the

In the case of Parker *vs.* Walden, 6, N. S., p. 713, it was decided that "where the contract states a privilege existing on the thing sold, and the vendee discharges the vendor from the consequences, he cannot resist the privilege on the ground that the act from which it results was not duly registered."

In the case of Noble *vs.* Cooper, 7 R., p. 44, it was held that the omission to register a mortgage cannot be taken advantage of by a purchaser of the mortgaged property, who assumed the payment of the debt secured by mortgage, as part of the price.

The decree perpetuating the injunction only sustained the exception of want of registry, which cannot be pleaded in this action, the defendant having assumed to pay the debt for which he is sued; and having therefore full knowledge of the mortgage by which it was secured.

It is therefore respectfully submitted, that there should be judgment in favor of Hoa for twenty-five thousand dollars, with interest thereon at the rate of eight per centum per annum, from the
156 23d of April, 1862, until paid, subject to a deduction of $1,000, and another of $2,500.

P. H. MORGAN,
Of Counsel for Hoa.

Circuit Court of the United States, fifth circuit and district of Louisiana, April term, 1867.

Judgment.

NEW ORLEANS, *Monday, May 13th*, 1867.

Court met pursuant to adjournment.
Present, Hon. E. H. Durell, district judge.
Absent, Hon. J. M. Wayne, presiding judge.

ROBERT PATTERSON
vs.
MEDORA A. MCGEE, *et al.* } No. 3,646.

For reasons orally assigned by the court, it is ordered, adjudged, and decreed that the peremptory exception, filed by the plaintiff on the 23rd November last, be overruled; that the intervention and 3rd opposition of Elizabeth Emilie de la Ronde, widow and testamentary executrix of the last will of Pierre Hoa, her deceased husband, be sustained, and that there be judgment in favor of the said
157 executrix, for the sum of twenty-five thousand dollars, with 8 p. c. interest per annum on $12,500, from 23d of April, 1858, and on $12,500 from 29th April, 1859, till paid, and costs of intervention, with preference and privilege on the proceeds of the plantation sold in this case on the 23rd June, 1866, superior to that of all persons whatsoever, and particularly to that of R. Patterson, the plaintiff in this case.

Judgment rendered May 13th, 1867.

Remittitur.

NEW ORLEANS, *Tuesday, May* 14, 1867.

Court met pursuant to adjournment.
Present, Hon. E. H. Durell, district judge.
Absent, Hon. J. M. Wayne, presiding judge.

R. PATTERSON *vs.* M. A. MCGEE, *et als.* } No. 3,646.

On motion of P. H. Morgan, of counsel for Emilie de la Ronde, executrix of the last will and testament of Pierre Hoa, intervenor herein, it is ordered that he have leave to enter a remittitur for the sum of three thousand five hundred dollars, and of all interest up to the 23rd April, 1862, on the judgment herein rendered in favor of the said executrix, on the 13th of May, 1867.

158

Judgment signed May 18, 1867.

(Signed) E. H. DURELL, *Judge.*

In the United States Circuit Court, fifth circuit and district of Louisiana.

Petition for writ of error.—Filed May 23rd, 1867.

To the honorable judges of said court, the petition of Robert Patterson, a citizen of the State of Pennsylvania, residing in the city of Philadelphia, in said State, respectfully represents:

That he is informed and verily believes there is error to his prejudice in the final judgment rendered on the 13th day of May, 1867, in a certain cause herein depending, wherein Robert Patterson is plaintiff, and Thomas L. McGee, and his wife Medora A. McGee, are defendants, and Pierre Hoa, deceased, represented by his testamentary executrix Elizabeth Emilie de la Ronde, is third opponent and intervenor, rendered in favor of said intervenor, and against your petitioner, said suit being No. 3,646 of the docket of said court. That he feels aggrieved by said final judgment and desires to sue out a writ of error returnable in the Supreme Court of the United States according to law.

159

Wherefore your petitioner prays that a writ of error may be allowed him herein the same to operate as a supersedeas, returnable to the Supreme Court of the United States, on the first Monday of December next, on his giving bond and surety as the law directs.

And he will ever pray, &c.

(Signed) HORNOR & BENEDICT,
Att'ys for Petitioner.

Order.

A writ of error to operate as a supersedeas is allowed in this case as prayed for and according to law returnable to the Supreme Court of the United States, on the first Monday in December next, the

petitioner giving bond in the sum of thirty-two thousand two hundred and fifty dollars, with good and solvent security conditioned as the law directs.

New Orleans, May 23d, 1867.

(Signed) E. H. DURELL, *Judge.*

160 *Bond for writ of error.—Filed May 25th,* 1867.

Know all men by these presents, that we, Robert Patterson, esquire, of Philadelphia, Pennsylvania, as principal, and Joseph P. Hornor, of this city, and Oscar Stone, of this city, each in the sum of ($10,000) ten thousand dollars, and William R. Crane, also of this city, in the sum of twelve thousand two hundred and fifty dollars, ($12,250) as sureties are held and firmly bound unto, Elizabeth Emily de la Ronde, testamentary executrix of the last will and testament of her deceased husband in the full and just sum of thirty-two thousand two hundred and fifty dollars, to be paid to the said Elizabeth Emily de la Ronde, test'y executrix, or to her certain attorney, executors, administrators, or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by the these presents. Sealed with our seals, and dated the twenty-third day of May, in the year of our Lord one thousand eight hundred and sixty-seven.

Whereas, lately at a Circuit Court of the United States, fifth judicial circuit holding sessions in and for the district of Louis-
161 iana, in a suit depending in said Circuit Court, wherein Pierre Hoa, Elizabeth Emilie de la Ronde, ex'x substituted, is plaintiff, and Robert Patterson, defendant, judgment was rendered against the said Robert Patterson, and the said Robert Patterson, having obtained a writ of error, and filed a copy thereof in the clerk's office of the said Circuit Court to reverse the judgment in the aforesaid suit, and a citation directed to the said Elizabeth Emilie de la Ronde, testamentary executrix, citing and admonishing her to be and appear at a Supreme Court of the United States, to be holden at Washington, the first Monday of December next.

Now the condition of the above obligation is such, that if the said Robert Patterson shall prosecute his writ to effect and answer all damages and costs, if he fail to make his plea good, then the above obligation to be void else to remain in full force and virtue.

(Signed) ROBERT PATTERSON,
By his attorneys HORNER & BENEDICT. [L. S.]
(Signed) JOSEPH P. HORNER. [L. S.]
(Signed) OSCAR STONE. [L. S.]
(Signed) W. R. CRANE. [L. S.]

Sealed and delivered in the presence of—

W. S. BENEDICT.

[25c. U. S. int. revenue stamp, affixed and cancelled.]

162 *Rule taken by 3rd opponent and grounds. From the minutes of May 30th, 1867.*

ROBERT PATTERSON
vs.
M. MCGEE. } No. 3,646.

On motion of P. H. Morgan, of counsel for the executrix of intervenor herein, Pierre Hoa, it is ordered that the plaintiff do show cause on Friday, the 7th day of June, 1867, at 11 a. m.. why the supersedeas herein issued should not be set aside upon the grounds: 1st. That the bond is insufficient; and 2d. Because the bondsmen are not worth the amount of the bond.

Marshal's return.

Received May 31st, 1867, and on the same day, month, and year served a copy of the within rule on W. S. Benedict, esq., the attorney named herein, personally, at his office, No. 18 Carondelet st , in this city.

(Signed) M. EGAN,
D'y U. S. Marshal.

New Orleans, June 31st, 1867.

163 *Order continuance of rule. From the minutes of June 7th, 1867.*

ROBERT PATTERSON
vs.
MEDORA A. MCGEE. } No. 3,646.

The rule taken by the executrix of Pierre Hoa, intervenor herein, on 30th of May, 1867, came up; P. H. Morgan for pl'ff in rule, W. S. Benedict for def't in rule, when, after hearing the evidence and counsel, the same is continued till to-morrow at 11 a. m.

Testimony of Joseph P. Hornor, Offered by defendant in rule, and filed June 7th, 1867.

Joseph P. Hornor, sworn, says: I reside in this city. Being shown bond herein filed, says: That is my signature to same. I am worth the full sum of ten thousand dollars over and above all my just debts and liabilities

Cross-examined·

164 I have in real estate my family residence on Tchoupitoulas st., between Race and Orange. It is worth twelve thousand dollars. It is assessed for $5,500. I owe $2,000 on it to my father, from whom I purchased in Jan'y, 1864.

I am on a bond for six hundred and twenty-five dollars. I have also four bonds of Jackson R.R. of $1,000 each, now selling at $76 each.

I have also $3,800 in cash in Citizens' Bank. I have money due me in firm of Hornor & Benedict to the amount of six thousand dollars. I have debts due me of three thousand dollars. I have household furniture worth twenty-five hundred dollars.

I have also a lot of ground cor. Custom-house and St. Denis, worth $300.

The reason the first peace of real estate is appraised so low is, because the assessors have confined themselves to the original purchase price of said property as sold in 1854 or 1855 to my vendor; and since I came into possession I have spent a great deal of money in improvements. My valuation is based upon sales of real estate in my vicinity, made during the present year.

(Signed) JOSEPH P. HORNOR.

165 Sworn to and subscribed before me the 7th day of June, 1865.

(Signed) C. W. WEST,
D'y Clerk.

U. S. Circuit Court.

Testimony of Oscar Stone and W. R. Crane. Offered by def't in rule, and filed June 7th, 1867.

ROBERT PATTERSON
vs.
M. A. GEE *et als.* } No. 3,646.

Oscar Stone, sworn, says, on being shown bond herein filed for writ of error: That is my signature to the same as surety in the sum of ten thousand dollars.

I think I am worth the sum of ten thousand dollars over and above all my debts and liabilities. I reside in this city.

Cross-examined:

I am worth just about ten thousand dollars. I return to the government the rent I take in. It is fifteen hundred dollars per annum.

My property consists of real estate and cash. I paid four
166 thousand dollars for one piece of property, and six thousand for another; the title to the last piece of property is not yet completed.

I do not owe a dollar to my knowledge. I am a married man. My wife had no property when I married her. I have never been married but once. I am on one other bond beside this one; it is for two thousand dollars. It was security for a lease. The lease has long since expired. There is a suit in reference to that lease.

(Signed) OSCAR STONE.

Sworn to and subscribed before me this 7th June, 1867.

(Signed) K. LOEW, *D'y C'k.*

W. R. Crane, sworn, says, on being shown bond filed· That is my signature. I am worth the amount on which I have placed myself on that bond, viz: twelve thousand two hundred and fifty dollars over and above all my debt and liabilities. I reside in this city.

Cross-examined:

176 My real I value at fifty-six thousand dollars over and above all debts on it.

(Signed) W. R. CRANE.

Sworn to and subscibed to before me this 7th June, 1867.

(Signed) K. LOEW,
Deputy Clerk.

Submission of rule. From the minutes of June 8th, 1867.

ROBERT PATTERSON
vs.
MEDORA A. MCGEE *et als.* } No. 3,646.

The rule herein continued from yesterday came up, P. H. Morgan for pl'ff in rule, W. S. Benedict for def't in rule, when, after hearing further evidence and argument, the court took time to advise.

Order rule made absolute. From the minutes of June 11th, 1867.

ROBERT PATTERSON
vs.
MEDORA MCGEE. } No. 3,646.

168 For reasons orally assigned, considering that the bond is insufficient, and not such as the law directs, it is ordered that the rule taken by Mrs. Hoa, intervenor, on 30th May last, be made absolulute, and that the writ of error in this case, so far as it is sought to operate as a supcrsedeas, be dismissed with costs.

Protest. Filed in evidence for pl'ff February 2, 1866.

UNITED STATES OF AMERICA,
State of Louisiana:

By this public instrument of protest: Be it known, that on this fourth day of February, in the year one tbousand eight hundred and sixty, at the request of the New Orleans Canal & Banking Company, holder of the original note whereof a true copy is on the reverse hereof written: I, Theodore Guyol, a notary public in and for the city and parish of New Orleans, State of Louisiana,
169 aforesaid, duly commissioned and sworn, presented the said note to the proper officer at the office of said company in this city, where it is made payable, and demanded payment thereof, and was answered that no funds had been deposited there to pay the same.

Whereupon, I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well as against the drawer or maker of the said note, as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges, and interest, suffered, or to be suffered, for want of payment of the said note.

Thus done and protested in the presence of W. G. Latham and Paul Abat, witnesses.

In testimony whereof, I grant these presents under my signature and the impress of the seal of office, at the city of New Orleans, on the day and year first above written.

(Signed) THEO. GUYOL,
Notary Public.

[$5,000.] NEW ORLEANS, *May* 20, 1858.

On the first of February, 1860, I promise to pay to my own
170 order, at the office of the New Orleans Canal & Banking Company in this city the sum of five thousand dollars, value received, with interest at the rate of eight per cent. per annum from the first of February, 1858, till paid.

MEDORA A. McGEE.
To authorize my wife, T. L. McGEE.

Ne varietur, New Orleans, July 20, 1858.
A. MAZUREAU, *Not. Pub.*

Endorsed: Pay to the order of A. D. Kelly & Co. Medora A McGee. To authorize my wife. T. L. McGee. A. D. Kelley & Co.

Note annexed to protest.

[$5,000.] NEW ORLEANS, *July 20th*, 1858.

On the first of February, 1860, I promise to pay to my own order at the office of the New Orleans Canal & Banking Company, in this city, the sum of five thousand dollars value received, with interest at the rate of eight per cent. per annum from the first of February, 1858, till paid.

MEDORA A. McGEE.
To authorize my wife, T. L. McGEE.

Ne varietur. New Orleans, July 20th, 1857. A. Mazareau, notary public.

171 Endorsed: Pay to the order of A. D. Kelly & Co. Medora A. McGee. To authorize my wife. T. L. McGee.

Protest filed in evidence by pl'ff, February 2d, 1866.

UNITED STATES OF AMERICA, *State of Louisiana*:

By this public instrument of protest, be it known that on this fourth day of February, in the year one thousand eight hundred and sixty, at the request of the New Orleans Canal & Banking Company, holder of the original note, whereof a true copy is on the reverse hereof written, I, Theodore Guyol, a notary public in and for the city of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, presented the said note the proper officer, at the
172 office of said company, in this city, where it is made payable, and demanded payment thereof, and was answered that no funds had been deposited there to pay the same.

Whereupon I, the said notary, at the request aforesaid, did protest, and by these present do publicly and solemnly protest, as well as against the drawer or maker of the said note as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges, and interest suffered, or to be suffered, for want of payment of the said note.

Thus done and protested in the presence of W. G. Latham and Paul Abat, witnesses.

In testimony whereof. I grant these presents, under my signature and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

(Signed) THEO. GUYOL, *Notary Public.*

[$5,000.] NEW ORLEANS, *July 20th*, 1858.

On the first of February, 1860, I promise to pay to my own order, at the office of the New Orleans Canal & Banking Company,
173 in this city, the sum of five thousand dollars value received, with interest at the rate of eight per cent. per annum from the first of February, 1858, till paid.

MEDORA A. McGEE.

To authorize my wife, T. L. McGEE.

Ne varietur. New Orleans, July 20, 1867. A. Mazureau, notary public.

Endorsed: Pay to the order of A. D. Kelley & Co. Medora A. McGee. To authorize my wife. T. L. McGee. A. D. Kelly & Co.

Note annexed to protest.

[$5,000.] NEW ORLEANS, *July 20th*, 1858.

On the first of February, 1860, I promise to pay to my own order, at the office of the New Orleans Canal & Banking Company, in this city, the sum of five thousand dollars value received, with interest at

the rate of eight per cent. per annum from the first of February, 1858, till paid.

MEDORA A. McGEE.
To authorize my wife, T. L. McGEE.

Ne varietur. New Orleans, July 20th, 1867. A. Mazureau, not. pub.

174 Endorsed: Pay to the order of A. D. Kelly & Co. Medora A. McGee. To authorize my wife. T. L. McGee.

Protest filed in evidence by plaintiff, February 2d, 1866.

UNITED STATES OF AMERICA, *State of Louisiana:*

By this public instrument of protest, be it known that on this fourth day of February, in the year one thousand eight hundred and sixty, at the request of the New Orleans Canal & Banking Company, holder of the original note, whereof a true copy is on the reverse hereof written, I, Theodore Guyol, a notary public in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, presented the said note to the proper officer at the office of said company, in this city, where it is made
175 payable, and demanded payment thereof, and was answered that no funds had been deposited there to pay the same.

Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said note as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges, and interest suffered, or to be suffered, for want of payment of the said note.

Thus done and protested in the presence of W. G. Latham and Paul Abat, witnesses.

In testimony whereof, I grant these presents, under my signature and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

[SEAL.] THEO. GUYOL, *Notnry Public.*

[$5,000.] NEW ORLEANS, *July 20th*, 1858.

On the first of February, 1860, I promise to pay to my own order, at the office of the New Orleans Canal & Banking Company, in this city, the sum of five thousand dollars value received, with
176 interest at the rate of eight per cent. per annum, from the the first of February, 1858, till paid.

MEDORA A. McGEE.
To authorize my wife, T. L. McGEE.

Ne varietur. New Orleans, July 20, 1867. A. Mazareau, not. pub.

Endorsed: Medora A. McGee. To authorize my wife T. L. McGee. Pay to the order of Mess. A. D. Kelly & Co. R. Patterson & Co.

177 United States of America—Circuit Court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE.

I, Dominick Urban, clerk of the Circuit Court of the United States, for the fifth circuit and district of Louisiana, do hereby certify that the foregoing 176 pages, and the pages 86, 98, and 93, marked bis., contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the case of R. Patterson *vs.* Medora A. McGee, *et al.*, Emilie de la Ronde, wo'w and ex'x of Pierre Hoa, 3d opponent, No. 3,646 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 17th day of June, A. D. 1867.

[SEAL.] D. URBAN, *Clerk.*

I, E. H. Durell, United States judge for the district of Louisiana, do hereby certify that Dominick Urban, whose name is signed to the above certificate as clerk of the Circuit Court of the United States for the fifth circuit and district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand and seal, at the city of New Orleans, in said district, this 17th day of June, A. D. 1867.

E. H. DURELL, *Judge.*

178 THE UNITED STATES OF AMERICA, *ss.*

The President of the United States to the honorable the judges of the Circuit Court of the United States in and for the fifth circuit, and holding sessions for the district of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said Circuit Court before you, or one of you, between Robert Patterson, of Philadelphia, Pennsylvania, plaintiff, against Medora A. McGee, wife of Thomas L. McGee, of the parish of Orleans, State of Louisiana, defendant, Pierre Hoa, deceased, by Elizabeth Emilie de la Ronde, his widow and testamentary executrix, intervenor and third opponent, as plaintiff, and Robert Patterson, defendant in intervention, a manifest error hath happened, to the great damage of the said Robert Patterson, as by said defendant's complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that

you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States, should be done.

Witness the honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, his 23d of May, in the year of our Lord one thousand eight hundred and sixty-seven.

[SEAL.] D. URBAN,

Clerk of the United States Circuit Court for District of Louisiana.

Endorsed: United States Circuit Court, No. 3,646. Robert Patterson *vs.* Medora A. McGee *et als.* Writ of error. Filed May 23, 1867. F. B. Vinot, d'y cl'k.

179 THE UNITOD STATES OF AMERICA,
District of Louisiana:

The President of the United States to Elizabeth Emilie de la Ronde, widow and testamentary executrix of the last will of Pierre Hoa, her deceased husband, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the Circuit Court of the United States for the fifth circuit and district of Louisiana, wherein Robert Patterson is plaintiff in error, and you are defendant, to show cause, if any there be, why the judgment rendered against the said plaintiff, as in said writ mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this twenty-seventh day of May, in the year of our Lord one thousand eight hundred and sixty-seved.

E. H. DURELL, *Judge.*

Endorsed: United States Circuit Court. No. 3,646. R. Patterson *vs.* Medora A. McGee, & *al.* Citatation in error.

Marshal's Return.

Received May 31st 1867, and same day, month, and year, served a copy of the within citation in error on P. H. Morgan, esq., personally, at the clerk's office of the 6th district court, in this city, the said Morgan being the attorney for Elizabeth Emilie de la Ronde, widow, &c., named herein.

M. EGAN,
D'y U. S. Marshal.

New Orleans, May 31st, 1867.

Supreme Court of the United States.

DECEMBER TERM, 1868.—No. 175.

ROBERT PATTERSON, PLAINTIFF IN ERROR,

vs.

EMILIE DE LA RONDE, WIDOW AND EXECUTRIX OF PIERRE HOA.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

BRIEF OF COUNSEL OF PLAINTIFF IN ERROR.

Robert Patterson, plaintiff in error, a mortgage creditor of Medora McGee, brought suit against the latter, in the United States circuit court for the district of Louisiana, on 24th October, 1865, to recover $35,000, with interest at eight per centum per annum from 1st February, 1858, (see his petition, print. trans., pp. 1 and 2,) and in due course obtained judgment against her for the amount claimed. (*See* the judgment, print. trans., p. 15.)

On this judgment a writ of *fi. fa.* was issued, (see print. trans., pp. 15 and 16,) under which the mortgaged property was sold and purchased in by the plaintiff in the suit, the plaintiff in error here, Robert Patterson, (see United States marshal's return on *fi. fa.*, print. rec., p. 16,) for the sum of $36,200.

It is the duty of the marshal of the United States court in Louisiana to conform, in selling real estate under *fi. fa.*, to the State law on the subject.

The State law requires that, when property, such as land, susceptible of being mortgaged, is sold, the sheriff shall obtain

from the office of the Recorder of mortgages a certificate, setting forth the mortgages appearing on the books of that office inscribed against the property about to be sold, which certificate he is required to read to the bystanders before he cries the property. (*See* La. Code of Practice, art. 678.)

And the sheriff only requires the purchaser to pay so much as his bid may exceed the mortgage, which, by the certificate, may appear to encumber the property. (Same art., 679)

The purchaser at such a sale retains in his own hands the amount appearing by the certificate to be due to mortgagees prior to himself. (Same art., 683.)

The judgment creditor has a right to purchase at the sale like any one else. (Same art., 688.)

After this sale, Pierre Hoa filed a petition of intervention and third opposition. (*See* print. rec., pp. 22–24.)

An intervention is a demand by which a third person requires to be permitted to become a party to a suit between other persons. (La. Code of Practice, art. 389.)

And a third opposition is a demand brought by a third person, not originally a party to the suit, for the purpose of arresting the execution of an order of seizure, or judgment rendered in such suit, or to regulate the effect of such seizure in what relates to him. (La. Code of Practice, art. 395.)

The object of Hoa's opposition was to obtain the payment to him of a part of the price bid by Patterson, to whom the property was adjudicated at the marshal's sale, equal to a mortgage which Hoa pretended to hold on the property, and amounting to upwards of $34,000. (*See* print. trans., p. 24.)

To this petition of intervention and third opposition Robert Patterson filed an answer. (*See* print. rec., pp. 25–28.)

The intervenor, Hoa, having died, his executrix and widow were allowed to become parties in his stead. (*See* print. rec., pp. 29, 30.)

Hoa's petition of intervention and third opposition avers, that the mortgage which he seeks to enforce against Patterson was recorded in the office of recorder of mortgages on the 9th May, 1853. (*See* print. trans., p. 24.)

To this Patterson answered, that said mortgage and priority of Hoa had been prescribed, and all right of action on it bar-

red by the statute of limitations of Louisiana. (*See* print. trans., p. 30.)

The case was tried without a jury, in the circuit court, and the judge gave judgment in favor of Hoa for the mortgage claim set up by him. (*See* print trans., p. 68.)

There is no bill of exceptions or statement of facts in the record.

The judgment is erroneous.

1. In Louisiana mortgages are allowed to prejudice third persons only when they have been publicly inscribed on records kept for that purpose. (La. Civil Code, arts. 3314, 3315.)

2. There is an office for recording of mortgages in each parish of the State. (La. Civil Code, arts. 3349, 3350.)

3. Mortgages are extinguished by prescription, *i. e.*, statute of limitations. (La. Civil Code, art. 3374.)

4. The prescription, operating release from debt, has also the effect of releasing the owner of an estate from every species of real right to which the property may have been subject, if the person in possession of the right has not exercised it during the time required by law. (La. Civil Code, art's. 3494, 3495.)

The hypothecary action is barred by the lapse of ten years after the plaintiff's right to sue accrued, and before the institution of the suit.

Lanusse *vs.* Minturn, 11 La. Rep., Thomas Curry, p. 256.

5. The registry or inscription of a mortgage preserves the evidence of it *during ten years* from the day of its date; the effect ceases even against the contracting parties after that time, unless the inscription is renewed. (La. Civil Code, art. 3353.)

6. This reinscription is indispensable to the enforcement of the mortgage against third persons; and prescription results

from the omission to reinscribe within ten years from the date of the first registry.

See Young *vs.* City Bank, 9 La. An. Rep., p. 194, and the cases there quoted.

7. Hoa, in the case *at bar*, alleges that his mortgage was inscribed on the 9th of May, 1853; his inscription of mortgage consequently became extinct on the 9th May, 1863; his suit was not instituted until more than three years after that date; it can have no effect. (*See* print. trans., pp., 22 and 24.)

8. Robert Patterson, being also a mortgage creditor, and having a judgment recognizing his mortgage as existing against the property from the 20th July, 1858, (*see* judgment, print. trans., p. 15,) cannot be prejudiced by Hoa's mortgage, the inscription of which had become null by the lapse of ten years from its date without renewal.

Purchasers of property sold under *fi. fa.* in Louisiana, are required to take it subject to such recorded mortgages as upon investigation many turn out to be *bona fide* and existing.

If the bid of the purchaser of property, at a sale under execution, be for a sum over and above the amount of the recorded mortgages, then the amounts of those mortgages, added to the amount of the bid, form the total price to be paid by the purchaser for the thing sold. The amount of the mortgage would be considered by the law as so much of the price retained in the purchasers hands to meet them; and, in case it turned out afterwards that any of the mortgages had been paid, or were unlawful simulations, the purchaser would owe their amount to the judgment debtor.

Pickersgill *vs.* Brown, 7 La. Annual Reports, p. 305.

9. A plaintiff who is a judgment creditor, and has a judicial mortgage on the property sold, has the right to dispute any prior mortgage, and inquire into its validity and amount.

Pickersgill *vs.* Brown, 7 La. Annual Reports, p. 306.

The judgment of the lower court should be reversed.

Respectfully submitted,

THOMAS J. DURANT.

For Robert Patterson, Plaintiff in Error.

FEBRUARY 6, 1869.

Morris v Robinson 6 Rob 171

Supreme Court of the United States.

EMILIE DE LA RONDE, EXECUTRIX, &c., OF PIERRE HOA, DECEASED, Defendant in Error,

ads.

ROBERT PATTERSON, Plaintiff in Error.

No. 175.

BRIEF FOR DEFENDANT IN ERROR.

STATEMENT.

Robert Patterson, the plaintiff in error, holding a mortgage upon certain land and slaves, made by Medora McGee, and bearing date July 20, 1858, brought suit in the circuit court of the United States for the eastern district of Louisiana, to collect the debt from the mortgaged premises, and recovered judgment for $35,000 and interest, February 5, 1866.

Record, pp. 1 to 15.

Upon this judgment an execution issued to the marshal, tested March 28, 1866, under which he levied upon the mortgaged premises on the 15th of May, 1866, and on the 23d of June, 1866, sold the same at auction to the plaintiff, Patterson, as the highest bidder, for "the sum of $36,200, cash, *which amount the said purchaser retained in his hands, firstly, to pay the first mortgage in favor of Pierre Hoa, amounting to*

$33,333 33; and secondly," to be applied on account of marshal's and clerk's costs, and any balance to be retained on the plaintiff's claim.

Execution, record, p. 15.

Return, record, p. 16.

On the 26th of June, 1866, PIERRE HOA, by P. H. Morgan, his attorney in the suit, filed, in the suit of Patterson *vs.* McGee, a petition of "intervention and third opposition," making Patterson and Bullitt, the marshal, parties defendant, to obtain the satisfaction of the amount remaining due to him of the unpaid purchase-money of the mortgaged premises, upon his sale of the same to Mrs. McGee by act of sale dated April 23, 1853, in which his vendor's privilege (or lien) is reserved, and, as well, a mortgage, of the premises sold, made in security therefor.

The purchase-money in this sale by Hoa to McGee, remaining unpaid, was the amount of two notes given by the purchaser to the vendor, for $12,500 each, dated April 23, 1853, *and falling due five and six years, respectively, after date.*

Petition, fol. 51, p. 24.

To this petition Bullitt, the marshal, answers, that he has proceeded according to law in leaving in the purchaser's hands the amount of the prior encumbrance on the premises sold, to be satisfied thereout by the purchaser.

This answer was filed June 30, 1866.

Answer of Bullitt, p. 25.

Patterson filed an answer to this petition, setting up an affirmative defense of new matter of contract between Pierre Hoa and McGee, claimed to amount to a *novation* of the debt, and a postponement to the mortgage of Patterson of Hoa's privilege as vendor and prior mortgagee.

This answer was filed June 30, 1866.

Pattterson's answer, pp. 25–28.

JULY 5, 1866, as appears by a document attached to the ex-

ecution, Mr. Morgan, attorney for the petitioner, Hoa, addressed to the marshal a restricted assent to his making title to Patterson, as purchaser at the marshal's sale of the premises; *he, Patterson, assuming in the act (or deed) the payment of the debt due from McGee to Hoa.* The note is as follows:

NEW ORLEANS, *5th July*, 1866.

C. BULLITT, Esq., *U. S. Marshal.*

"DEAR SIR: I will make no objection to your making title to General Patterson of the McGee property. General Patterson assuming in the act to satisfy the debt due by McGee to Pierre Hoa, my client.

"Yours, truly,

"P. H. MORGAN."

Accordingly, on the day of this restricted assent, and in conformity to the same, the marshal executed and delivered to Patterson the act of sale, making title to him as purchaser of the premises.

This act recites the procedure of the marshal under the execution to make the judicial sale, and, among other things, his announcement to the bidders at the sale of the subsisting mortgages on the property, of which the *first* was "the mortgage by her, (Mrs. McGee,) granted per act before A. Masureau, notary, dated 23d April, 1853, *in favor of Pierre Hoa, her vendor, to secure* $60,000," &c.

Fol. 93, p. 41.

The act also recites, that "Mr. Durant, attorney for plaintiff in said suit, and on behalf of said plaintiff, Robert Patterson, a resident of Pennsylvania, being the highest and last bidder in the hereinbefore described property, the same was adjudicated to him for the account of the said Robert Patterson, for the price and sum of $36,200 cash, *which amount of adjudication the said purchaser retained in his hands for the following purposes, to wit:*

"1st. *To satisfy to the first mortgagee, and with vendor's privilege, Pierre Hoa, a sum of* $33,333 33, *due him, as per cer-*

tificate of mortgage above recited. Said sums more amply specified in an intervention on file in said suit."

Fol. 94, p. 42.

The act of sale then proceeds to state the conveyance as made "*in consideration of the within adjudication and assumption by the said purchaser.*"

Fol. 95, p. 43.

This suit of intervention and third opposition having been set down for trial between the parties upon the foregoing pleadings, on November 23, 1866, the day assigned for trial, the defendant, Patterson, filed a "peremptory exception" to the demand of Hoa, upon the single and new ground, "that the mortgage and priority of privilege of said Pierre Hoa has been prescribed, and that said privilege has been lost by reason of the non-reinscription in the books of recorder of mortgages of this parish of the mortgage alleged to be granted by act, before A. Masureau on 23d April, 1853, within the delay prescribed by law."

Record, p. 30.

A trial was had, and proofs given on both sides, and, by judgment rendered December 7, 1866, the peremptory exception of Patterson was overruled, the intervention and third opposition of Hoa was sustained, and judgment given for his representative for $25,000, and interest and costs, "with preference and privilege in the proceeds of the plantation sold in this cause on the 23d June, 1866, superior to that of all persons whatsoever, and particularly to that of R. Patterson, the plaintiff in this suit."

Judgment, Rec., p. 48.

Patterson obtained a rule to show cause why a new trial should not be had, *upon grounds of law and fact, and of evidence*, set forth in his motion.

Rec., pp. 48–9.

January 29, 1867, the rule was made absolute, and a new trial was granted.

Order, Rec., p. 51.

A new trial was had, upon which the former and new evidence was given.

Rec., fol. 120, p. 54.

May 13, 1867, upon the second trial, judgment was given in favor of the executrix of Hoa, and against Patterson, to the same effect as the former judgment.

Second Judgment, Rec., p. 68.

Remittitur of excess in computation, Rec., fol. 158, p. 69.

By the act of sale from Pierre Hoa to Mrs. McGee, dated April 23, 1853, the amount of the purchase-money left on credit, and the form in which it is evidenced, are precisely stated, and, in order to secure the same, "the purchaser does hereby specially mortgage and hypothecate the plantation and slaves, herein described and conveyed, *in favor of her said vendor, &c.*, binding herself not to sell, mortgage, nor in any manner alienate the said mortgage premises to the prejudice of this mortgage."

Record, fol. 75, p. 33.

And further, "all the parties hereto acknowledged that *the vendor's mortgage and privilege* shall extend not only to the lands and all the slaves herein described, but to all the appurtenances," &c.

Record, fol. 84, p. 37.

The act of mortgage by Mrs. McGee to Patterson, dated July 20, 1858, states, after the description of the premises mortgaged, that they are "the same property which the said Mrs. McGee acquired by purchase from P. Hoa, by an act passed in this office on the 23d day of April, 1853."

Mrs. McGee also binds herself, in this act of mortgage, "to

cancel all the mortgages on said plantation and slaves, *with the exception of the one for* $50,000, *in favor of her vendor, Pierre Hoa," &c.*

Record, fols. 6 and 8, pp. 3, 4.

The record contains no "bill of exceptions" and no "statement of facts," nor any note of the course of proceeding at either trial in regard to objections to evidence or rulings upon the introduction of evidence or questions of law passed upon by the court.

The defendant, Patterson, sued out a writ of error, and the return exhibits the pleadings in the action, the interlocutory and final judgments in the same, the documentary evidence of the parties, and the briefs of their counsel, but IT IS IMPOSSIBLE TO FIND WITHIN THE RECORD ANY ERRORS OF LAW FOR REVIEW AND CORRECTION BY THIS APPELLATE COURT.

POINTS.

FIRST POINT. As there are no EXCEPTIONS, the writ of error brings up for review only such *error* as the record alone discloses.

But, unless it is apparent, on the record, that no possible or imaginable state of proofs could sustain the recovery which the judgment gives upon the cause of action prosecuted in the cause, there is no *error* cognizable by this court, and the judgment must be affirmed.

But as, upon this record, it is apparent that the only impediments pretended to the recovery of the intervenor and third opponent, according to the claim of the petition, were of matters of fact alleged in the defendant's pleadings and requiring to be proved, it is manifest that the only assignable *errors*, upon which the judgment could be drawn in question, arose upon the trial, and, being outside of the record, require to be brought to the notice of this court by a bill of exceptions.

In the absence of any bill of exceptions, or of any possible substitute for it, in the nature of a statement of facts, the judgment must be affirmed.

SECOND POINT. If, however, the questions of law arising between the parties, at the trial and upon the proofs, can be examined in this court, upon this return to the writ of error, no error exists.

The only error suggested is, that Pierre Hoa's privilege as vendor, for the unpaid purchase-money on his sale to Mrs. McGee, secured also by special mortgage, which was, by the judgment below, enforced in preference and priority over Patterson's subsequent mortgage from McGee, could not be so enforced, because the act of sale reserving it, and containing the mortgage to secure it, was not re-inscribed (or again recorded) *within ten years* after its first inscription.

It is contended, on the part of Patterson, that, by the Louisiana Code, this failure to re-inscribe the act of sale defeats the remedy against the property, and gives priority to Patterson's later mortgage.

This result, upon the facts proved in this case, cannot follow the omission of re-inscription, for several reasons.

THIRD POINT. The articles of the Louisiana Code, which ascertain and define the nature of the vendor's privilege, and the effect of prescription, are as follows:

Art. 3150:

"The property of the debtor is the common pledge of his creditors, and the proceeds of its sale must be distributed among them ratably, unless there exist among the creditors some lawful causes of preference."

Art. 3151:

"Lawful causes of preference are privileges and mortgages."

Art. 3153:

"Privilege is a right which *the nature of a debt* gives to a creditor, and which entitles him to be preferred before other creditors, even those who have mortgages."

Art. 3216:

"Creditors who have a privilege on immovables and slaves are—

"1. The vendor on the estate or slave by him sold, for the

payment of the price, or so much of it as is due, whether it was sold on or without a credit."

Art. 3218:

"If there are several successive sales on which the price is due, wholly or in part, the first vendor is preferred to the second, the second to the third, and so throughout."

Art. 3238:

"The vendor of an immovable or slave only preserves his privilege on the object when he has caused to be duly recorded, at the office for recording mortgages, his act of sale, in the manner directed hereafter, whatever may be the amount due to him on the sale."

Art. 3244:

"Privileges become extinct— * * * 4. By prescription."

Art. 3422:

"The prescription by which debts are released, is a peremptory and perpetual bar to every species of action, real or personal, when the creditor has been silent for a certain time without urging his claim."

Art. 3494:

"The prescription which operates a release from debts, discharges the debtor, by the mere silence of the creditor during the time fixed by law, from all actions, real or personal, which might be brought against him."

Art. 3495:

"This prescription has also the effect of releasing the owner of an estate from every species of real rights to which the property may have been subject, if the person in possession of the right has not exercised it during the time required by law."

The articles of the Code that relate to the necessity and effect of inscription of mortgages, appliable to this case, are as follows:

Art. 3297:

"*Among creditors*, the mortgage, whether conventional, legal,

or judicial, has force only from the time of recording it, in the manner hereafter directed, except in the cases mentioned below."

Art. 3314:

"Conventional mortgage is acquired only by consent of the parties; and judicial or legal mortgages only by the effect of a judgment, or by operation of law.

"But these mortgages are only allowed *to prejudice third persons* when they have been publicly inscribed in records kept for that purpose, and in the manner hereinafter directed."

Art. 3315:

"By the words *third persons*, used in the foregoing article, are to be understood all persons who are not parties to the act or to the judgment on which the mortgage is founded, *and who have dealt with the debtor either in ignorance or before the existence of this right.*"

Art. 3333:

"*The inscriptions preserve the mortgage and the privilege* during ten years, reckoning from the day of their date. Their effect ceases, even against the contracting parties, if the inscriptions have not been renewed before the expiration of this time, in the manner in which they were first made."

[The words in italics are a literal translation from the French side of this article; the English side, as printed, leading to obscurity.]

FOURTH POINT. Upon the whole system, then, of inscriptions of privileges and mortgages, and their extinction by prescription, as regulated by the Louisiana Code, it is manifest that certain *general principles*, so familiar to us in their application to the recording acts of the other States and England, equally obtain in the law of LOUISIANA.

I. Inscription, whether of privileges or of mortgages, is of no application, in respect of the efficiency of the instruments between the parties to the contracts or their privies, in law or fact, or those brought by their own contract into knowl-

edge, or obligation of knowledge, of the privilege or mortgage in question.

In these relations, inscription adds nothing to the force or durability of the contract, and its omission neither enervates nor curtails the contract itself.

II. Inscription is solely to affect "*third parties*," within the definition of the Code, with knowledge of what is lawfully inscribed, by giving them the opportunity of knowledge by inspection, and visiting the neglect of inspection upon *them*, and not upon the party who has made the *required* inscription.

III. Re-inscription, or its omission, is of no more consequence between parties and privies to these contracts, *in regard to the efficacy of the contracts*, than original inscription.

The whole measure of its application is to "*third parties*," within the definition of the Code, and only in limitation of the period of time for which they are affected by the opportunity of inspection, and the consequences of its neglect.

Shepherd *vs.* Orleans Cotton Press Co., (2 La. Ann. Rep., 113:)

"We do not understand article 3333 as providing for the *prescription* of mortgages, but, on the contrary, as recognizing the right of re-inscription after the expiration of ten years.

"It is the effect of the inscription that ceases, not the effect of the mortgage. If the prescription of the mortgage had been intended, it would have been so expressed.

"The object of the re-inscription is to dispense from searching for the evidence of the mortgages more than ten years back."

IV. PRESCRIPTION of a right (which is its extinction in respect of remedy by too long neglect, *after it accrues*, to enforce it) has no relation to *inscription* or its omission.

The only effect of the articles of the Code respecting the prescription of *debts*, attended by privilege or mortgage, (Code, art. 3494–3495,) is, that the extinction of the *debt*, the principal thing, involves the extinction of the privilege or the mortgage, which cannot survive the debt to which they are accessory.

The authorities in the Louisiana Reports to support these propositions are abundant and uniform. Thus—

Planters Bank *vs.* Allard, (8 Martin, N. S., 136:)

"A purchaser, with a knowledge of an existing mortgage, cannot avail himself of a want of registry."

Rachal *vs.* Normand, (6 Rob., 88:)

"A purchaser, with knowledge of an existing privilege or mortgage, cannot avail himself of its not having been registered."

Robinett *vs.* Compton, (2 La. Ann., 846:)

"Actual knowledge by a purchaser, of an existing mortgage or title, is equivalent to a notice resulting from a registry of the mortgage or title."

Swan *vs.* Moore, (14 La. Ann., 833;) Parker *vs.* Walden, 6 Martin, U. S., 713;) Sanders *vs.* Dosson, (3 La. Ann., 587:)

"As between the vendor and vendee, it is unimportant whether a mortgage given to secure the price be recorded or not. Any objection on account of its not having been recorded could only be raised by a third possessor."

Haines *vs.* Verrel, (11 La. Ann., 122:)

"A mortgage is equally binding between the contending parties without registry."

Thompson *vs.* Passent, (12 Id., 183:)

"As between the parties to a building contract, the privilege of the builder may exist without registry."

Saurinet *vs.* Landeau, (1 La. Ann., 221:)

"Any act inscribed in the recorder's office, which conveys to third persons the knowledge of a mortgage, fulfils the object of the law, which is to give notice to the world of the incumbrances upon immovables, and to afford means of information to all interested in making the inquiry."

Noble *vs.* Cooper, (7 Rob., 44:)

"Want of registry cannot be pleaded in this action, the defendant having assumed to pay the debt for which he is sued, and having, therefore, full knowledge of the mortgage by which it is secured."

Parker *vs.* Walden, (6 Martin, N. S., 713:)

"Whatever might have been the effect of the want of registry of the contract, in pursuance of which the plaintiff provided to do the work undertaken by him, to defeat his claim of privilege under other circumstances than those in which the present cause is situated, we believe that the defendant cannot profit by the alleged defect of recording according to the actual state of this case.

"There is a clause in the act of sale from Gravier's heirs to him which gave notice that the privilege or lien, now claimed to be enforced on the property then sold, existed at the time of sale. By this clause he relieves the vendors from all responsibility that might be recovered against him for the amelioration of the lot transferred by the act of sale; and it seems to us to follow as a corollary that he took this risk on himself."

The cases cited and relied upon for the plaintiff in error do not infringe the propositions above laid down, and supported by the above citations from the reports. These cases are:

Lanusse *vs.* Minturn, (11 La., 256:)

The hypothecary action is barred by the lapse of ten years after the plaintiff's right to sue accrued, and before the institution of suit.

Held, that Art. 3495 applies as *an incident from the barring of the action* that the estate was released.

Young *vs.* The City Bank, (9 La. Ann. Rep., 193:)

"The re-inscription of a mortgage, as prescribed by Art. 333, C. C., is indispensable to the enforcement of the suit against *third persons*. The institution of a suit on the mortgage, or a litigation in respect of it, does not dispense with the re-inscription."

FIFTH POINT. That Patterson, the plaintiff in error, both in his character of mortgagee from Hoa's vendee, and of purchaser at the marshal's sale, was never at any moment a "*third person*," within the definition of the Code, so as to

bring into operation for his advantage, and to the prejudice of Hoa's vendor's privilege or mortgage, the provisions of the Code respecting the inscription or re-inscription of privileges and mortgages, is indisputable upon the proofs.

That Patterson was, by the explicit force and obligation of his own contracts with Hoa's vendee, held to the knowledge and the maintenance of Hoa's vendor's privilege, and to knowledge of and submission to his mortgage, is also manifest.

As mortgagee, he takes, in terms and in equity, a security only on what estate his mortgagor had, and, on the face of the mortgage to him, had limited her estate to, to wit, the estate over and above the vendor's privilege for the unpaid purchase money.

See preceding "Statement."

As purchaser, at the marshal's sale, he is affected as a *bidder* by the announcement of this vendor's privilege and mortgage; he obtains his deed from the marshal only upon assenting to assume the satisfaction of the *debt* to the vendor remaining unpaid; and he assumes in the deed which he takes from the marshal the payment of the amount so due to Hoa.

See preceding " Statement."

SIXTH POINT. The whole defence of Patterson is rested, not upon any equity or right on his part; not on any defect of right or equity on the part of the defendant in error; not upon any policy or principle of the inscription law of Louisiana; but solely upon some literal obstruction of all this right, equity, policy, and principle, found, it is argued, in article 3333 of the Code.

But even this support fails him upon a correct interpretation of this article, and the authorities based upon it.

As, confessedly, *inscription* never gave *any* effect to contracts as between contracting parties, in respect to the vigor or endurance of the contracts, so the ceasing of any effect for want of re-inscription cannot take away from the vigor or endurance of the contracts as towards any but "*third persons*," within the definition of the Code. Of these "*third persons*" Patterson is not one.

The record of inscription may be *evidence*, as between the contracting parties, in place of the original, and this effect may cease for want of re-inscription. This is justly within the policy of recording acts.

Besides the authorities herein cited, the court is respectfully referred to the brief for the present defendant in error in the court below, found at pages 61 to 68 of the *Record*, and especially to the citations from the "commentators" there adduced.

SEVENTH POINT. The judgment below should be affirmed with costs, as well upon the merits, as for the want of "exceptions" for review appearing upon the Record.

WILLIAM M. EVARTS,
Of Counsel for Defendant in Error.